

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS INC.,  
Petitioner,

v.

MONKEYMEDIA, INC.,  
Patent Owner.

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Case IPR2018-00059  
Patent 9,247,226 B2

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Before MARC S. HOFF, LYNNE E. PETTIGREW, and  
KAMRAN JIVANI, Administrative Patent Judges.

HOFF, *Administrative Patent Judge.*

SCHEDULING ORDER

This Order sets a schedule for trial, including due dates for the parties to take action upon institution of the trial. *See* Appendix. The trial will be administered in a just, speedy, and inexpensive manner such that pendency before the Board is no more than one year after institution. 37 C.F.R. §§ 42.1(b) and 42.100(c).

#### A. INITIAL CONFERENCE

An initial conference call will be scheduled only upon request by either party within thirty (30) days after entry of this Order. To request a conference call, the parties should consult with each other and submit a list of proposed dates and times for the call. If an initial conference call is scheduled, the parties are directed to the *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012) (“*Trial Practice Guide*”), for guidance in preparing for the call, and should be prepared to discuss any proposed changes to the schedule and any motions the parties anticipate filing during the trial.

#### B. MEET AND CONFER REQUIREMENT

The parties are encouraged to engage in meaningful discussions before seeking authorization under 37 C.F.R. § 42.20(b) to file a motion for relief with the Board. At a minimum, before requesting authorization, the parties shall confer with each other in a good-faith effort to resolve the issue for which relief is to be sought. Only if the parties cannot resolve the issue on their own may a party request a conference call with the Board in order to seek authorization to move for relief. In any request for a conference call with the Board, the requesting party shall: (1) certify that it has in good-faith conferred (or attempted to confer) with the other parties in an effort to

resolve the issue; (2) identify with specificity the issue for which agreement has not been reached; (3) state the precise relief to be sought; and (4) propose specific dates and times at which both parties are available for the conference call.

### *C. CONFIDENTIAL INFORMATION*

The parties must file confidential information using the appropriate availability indicator in PTAB E2E (e.g., “Board and Parties Only”), regardless of whose confidential information it is. It is the responsibility of the party whose confidential information is at issue, not necessarily the proffering party, to file the motion to seal, unless the party whose confidential information is at issue is not a party to this proceeding.

A protective order does not exist in a case until one is filed in the case and is approved by the Board. If a motion to seal is filed by either party, the proposed protective order should be presented as an exhibit to the motion. The parties are urged to operate under the Board’s default protective order, should that become necessary. *See* Default Protective Order, *Trial Practice Guide*, 77 Fed. Reg. at 48,769–71 (Appendix B). If the parties choose to propose a protective order deviating from the default protective order, they should submit the proposed protective order jointly. A marked-up comparison of the proposed and default protective orders should be presented as an additional exhibit to the motion to seal, so that the difference can be understood readily. The parties should contact the Board if they cannot agree on the terms of the proposed protective order.

Redactions should be limited strictly to isolated passages consisting entirely of confidential information. The thrust of the underlying argument

or evidence must be clearly discernible from the redacted version.

Information subject to a protective order will become public if identified in a final written decision in this proceeding. A motion to expunge the information will not necessarily prevail over the public interest in maintaining a complete and understandable file history. *See Trial Practice Guide*, 77 Fed. Reg. at 48,761.

#### *D. DUE DATES*

The Appendix specifies due dates for the parties to take action in this trial. The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). A notice of any stipulation, specifically identifying the changed due dates, must be filed promptly with the Board. The parties may not stipulate to an extension of DUE DATES 6 and 7. Stipulating to a different DUE DATE 4 shall not modify the deadline for requesting an oral argument as set out in this Order.

In stipulating to different dates, the parties should consider the effect of the stipulation on times to object to evidence (37 C.F.R. § 42.64(b)(1)), to supplement evidence (37 C.F.R. § 42.64(b)(2)), to conduct cross-examination (37 C.F.R. § 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony (*see* section E, below).

Although the filing of a Motion to Amend is authorized under our Rules, the patent owner must confer with the Board at least ten (10) business days prior to DUE DATE 1 before filing any Motion to Amend.

1. *DUE DATE 1*

The patent owner may file:

- a. A response to the petition (37 C.F.R. § 42.120), and
- b. A motion to amend the patent (37 C.F.R. § 42.121).

The patent owner must file any such response or motion to amend by DUE DATE 1. If the patent owner elects not to file anything, the patent owner must arrange a conference call with the parties and the Board. *The patent owner is cautioned that any arguments for patentability not raised and fully briefed in the response will be deemed waived.*

2. *DUE DATE 2*

The petitioner must file any reply to the patent owner's response and opposition to the motion to amend by DUE DATE 2.

3. *DUE DATE 3*

The patent owner must file any reply to the petitioner's opposition to patent owner's motion to amend by DUE DATE 3.

4. *DUE DATE 4*

a. Each party must file any observations on the cross-examination testimony of a reply witness (*see* section F, below) by DUE DATE 4.

b. Each party must file any motion to exclude evidence (37 C.F.R. § 42.64(c)) and any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 4.

5. *DUE DATE 5*

a. Each party must file any responses to observations on cross-examination testimony by DUE DATE 5.

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