

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUAWEI DEVICE CO., LTD.,
Petitioner,

v.

MAXELL, LTD.,
Patent Owner.

Case IPR2018-00233
Patent 6,754,440 B2

Before MINN CHUNG, TERRENCE W. McMILLIN, and
JOHN A. HUDALLA, *Administrative Patent Judges*.

CHUNG, *Administrative Patent Judge*.

SCHEDULING ORDER
37 C.F.R. § 42.5(a)

This Order sets a schedule for trial in this proceeding, including due dates for the parties to take action in this trial. *See Appendix.*

A. INITIAL CONFERENCE

No initial conference call is scheduled for this case. The parties are directed to contact the Board within ten (10) business days of the date of entry of this Scheduling Order if there is a need to discuss proposed changes (i.e., regarding DUE DATES 6 and 7) or any proposed motions, *not* authorized already by our Rules or by this Scheduling Order, which the parties anticipate filing during the trial. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012) (setting forth guidance in preparing for the initial conference call).

The parties' attention is directed to the following matters.

B. MOTION TO AMEND

Patent Owner is reminded that it must confer with the Board before filing a Motion to Amend. 37 C.F.R. § 42.121(a). Patent Owner should contact the Board to request a conference in sufficient time to ensure that the conference is conducted at least one week before DUE DATE 1.

Patent Owner and Petitioner are directed to the rules governing Motions to Amend. 37 C.F.R. §§ 42.24(a)(1), 42.24(c), 42.121.

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.

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, Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, App. B (Aug. 14, 2012).

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 differences are highlighted. The parties should contact the Board if they cannot agree on the terms of the proposed protective order.

1. *Redactions*

The Board has a strong interest in the public availability of the proceedings. Redactions should be limited strictly to isolated passages consisting of confidential information. The thrust of the underlying argument or evidence must be discernable from the redacted version.

2. *Confidential Information in Final Written Decisions*

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* Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,761.

D. MEET AND CONFER REQUIREMENT

The panel encourages the parties to resolve disputes relating to discovery on their own and in accordance with the precepts set forth in 37 C.F.R. § 42.1(b). To the extent that a dispute arises between the parties relating to discovery, the parties shall meet and confer to resolve such a dispute before contacting the Board. If attempts to resolve the dispute fail, either party may request a conference call with the Board and the other party 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, if the request is a time-sensitive emergency) with the other party in an effort to resolve the issue; (2) identify with specificity but without argument 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.

E. DUE DATES

The Appendix to this Order 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.

Regardless of whether the parties stipulate to a change of DUE DATE 4, requests for oral argument must be filed no later than the date set forth in this order for DUE DATE 4, for Board planning purposes.

In stipulating to different times, 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 D, below).

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. In addition to the rules concerning Motions to Amend mentioned above, the patent owner is directed to the rules governing Patent Owner Responses. 37 C.F.R. §§ 42.24(b), (d). 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. In addition to the rules concerning Motions to Amend mentioned above, the petitioner is directed to the rules governing Replies. 37 C.F.R. §§ 42.24(c), (d).

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.

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