

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SNAP INC.,  
Petitioner,

v.

VAPORSTREAM, INC.,  
Patent Owner.

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Case IPR2018-00369 (Patent 9,313,155 B2)  
Case IPR2018-00397 (Patent 9,306,886 B2)  
Case IPR2018-00404 (Patent 8,935,351 B2)  
Case IPR2018-00408 (Patent 9,338,111 B2)<sup>1</sup>

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Before JUSTIN T. ARBES, STACEY G. WHITE, and  
JENNIFER MEYER CHAGNON, *Administrative Patent Judges*.

PER CURIAM.

SCHEDULING ORDER

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<sup>1</sup> This Scheduling Order applies to each of the four cases. The parties are not authorized to use this style heading for any subsequent papers.

IPR2018-00369 (Patent 9,313,155 B2)  
IPR2018-00397 (Patent 9,306,886 B2)  
IPR2018-00404 (Patent 8,935,351 B2)  
IPR2018-00408 (Patent 9,338,111 B2)

This Order sets a schedule for trial, including due dates for the parties to take action upon institution of the trial. *See* Due Date Appendix.

#### A. INITIAL CONFERENCE

The parties are directed to contact the Board within one month of the entry date for this Scheduling Order if there is a need to discuss proposed changes to this Order or proposed motions. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012) (guidance in preparing for the initial conference call).

#### B. MEET AND CONFER REQUIREMENT

The parties are encouraged to engage in meaningful discussion 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.<sup>2</sup> 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 party 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

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<sup>2</sup> Patent Owner may file a motion to amend without prior authorization, but only after conferring with the Board. 37 C.F.R. § 42.121(a).

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(4) propose specific dates and times at which both parties are available for the conference call.

### C. CONFIDENTIAL INFORMATION

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. 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.

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. CROSS-EXAMINATION

Except as otherwise ordered or as the parties might otherwise agree, for each due date—

IPR2018-00369 (Patent 9,313,155 B2)  
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1. Cross-examination begins after any supplemental evidence is due.  
37 C.F.R. § 42.53(d)(2).

2. Cross-examination ends no later than a week before the filing date for any paper in which the cross-examination testimony is expected to be used. *Id.*

#### E. OBSERVATIONS ON CROSS-EXAMINATION

Observations on cross-examination provide the parties with a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness because no further substantive paper is permitted after the reply. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,768. The observations must be a concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit. Each observation should not exceed a single, short paragraph. The opposing party may respond to the observation. Any response must be equally concise and specific.

#### F. DEPOSITIONS

The parties are reminded that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,772 (Appendix D), apply to this proceeding. The Board may impose an appropriate sanction for failure to adhere to the Testimony Guidelines. 37 C.F.R. § 42.12. For example, reasonable expenses and attorneys' fees incurred by any party may be levied on a person who impedes, delays, or frustrates the fair examination of a witness.

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## G. PATENT OWNER'S MOTION TO AMEND

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

## H. DUE DATES

The Due Date 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.

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, above).

### 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

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