

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RIDDELL, INC.,
Petitioner,

v.

KRANOS IP II CORP.,
Patent Owner.

Case IPR2018-01164
Patent 6,434,755 B1

Before HYUN J. JUNG, JAMES A. TARTAL, and
JEFFREY A. STEPHENS, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

CASE MANAGEMENT
AND SCHEDULING ORDER
37 C.F.R. § 42.5

This Order sets a schedule for trial, including DUE DATES for the parties to take action upon entry of the Decision to Institute. *See* APPENDIX OF DUE DATES FOR IPR2018-01164. 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).

I. GENERAL INSTRUCTIONS

A. *Request for an Initial Conference Call*

An initial conference call will be scheduled only upon request by either party within thirty (30) days of this Order. To request a conference call, the parties should consult with each other and then inform the Board of the following: (a) two or more dates and times when both parties are available for the call, and (b) any proposed changes to this Order or proposed motions that have not been authorized in this Order or other prior Order or Notice. 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) (available at <https://go.usa.gov/xU7GK>) (“Practice Guide”) (guidance in preparing for the initial conference call), 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. *Resolution of Disputes – Meet and Confer Requirement*

The Board encourages parties to resolve disputes, including disputes relating to discovery, on their own and in accordance with the precepts of securing a just, speedy, and inexpensive resolution, 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, 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 for which *both parties* are available for the conference call.

C. Word Count, Page Limit, and Type Face Requirements

The parties must be familiar with, and may not seek to circumvent, our rules governing the filing of documents, including word counts, page limits, and type face requirements. *See* 37 C.F.R. §§ 42.6, 42.24.

“Excessive wording in figures, drawings or images, deleting spacing between words, or using excessive acronyms or abbreviations for word phrases, in order to bypass the rules on word count, are not reasonable.”

Google Inc. v. Makor Issues & Rights Ltd., No. IPR2016-01535, slip op. at 7 (PTAB, Dec. 1, 2016) (Paper 8); *see also*, *Arctic Cat Inc. v. Polaris Indus. Inc.*, No. IPR2017-00433 (PTAB, June 22, 2017) (Paper 15); *Google Inc. v. Porto Tech. Co. Ltd.*, No. IPR2016-00022, (PTAB, Nov. 23, 2016) (Paper 25). Cutting and pasting text into a document as an image is unreasonable unless the text is ancillary to an existing image or the text comprises pre-existing labels as part of a figure, or unless any added text is included manually in the final word count. The failure to use normal

citations in order to reduce the word count by, for example, deleting spacing, is inappropriate and may result in sanctions. *See Axon Enter., Inc. v. Digital Ally, Inc.*, No. IPR2017-00375, slip op. at 2, n.2 (PTAB, June 6, 2017) (Paper 9). Counsel for both parties will review the cited papers above, and by signing the certification under 37 C.F.R. § 42.24(d), counsel is attesting that any filing they make in this proceeding is in compliance with our regulations as interpreted in the above cited papers. Failure to comply with these requirements may result in expungement of any paper or brief not in compliance and/or sanctions.

D. Procedures for Entry of a Protective Order

No protective order shall apply to this proceeding until the parties propose entry of one and the Board approves it. If either party files a motion to seal a document before entry of a protective order, a jointly proposed protective order should be presented as an exhibit to the motion.

The Board encourages the parties to adopt the Board's Default Protective Order if they conclude that a protective order is necessary. *See Practice Guide*, 77 Fed. Reg. at 48,771 (App. B) (the "Default Protective Order"). If the parties choose to propose a protective order deviating from the Default Protective Order, they must submit the proposed protective order jointly, along with a marked-up comparison of the proposed and default protective orders showing the differences between the two, and must explain why good cause exists to deviate from the Default Protective Order.

The Board has a strong interest in the public availability of trial proceedings. Redactions to documents filed in this proceeding should be limited to the minimum amount necessary to protect confidential information, and the thrust of the underlying argument or evidence must be

clearly discernible from the redacted versions. We also advise the parties that information subject to a protective order may become public if identified in a final written decision in this proceeding, and that a motion to expunge the information will not necessarily prevail over the public interest in maintaining a complete and understandable file history. *See Practice Guide*, 77 Fed. Reg. at 48,761.

E. Testimony

The Testimony Guidelines appended to the Practice Guide, Appendix D, apply to this proceeding. The Board may impose an appropriate sanction on any party who fails to adhere to the Testimony Guidelines, including reasonable expenses and attorney fees incurred by a party affected by another party's misconduct. 37 C.F.R. § 42.12.

Except as the parties might otherwise agree, for each due date, cross-examination of a witness begins after any supplemental evidence is due and ends no later than a week before the filing date for any paper in which the cross-examination testimony is expected to be used. 37 C.F.R. § 42.53(d)(2). Should a party submit a deposition transcript of a witness's testimony as an exhibit in this proceeding, the submitting party shall file the full transcript of the testimony rather than excerpts of only those portions being cited. After a deposition transcript has been submitted as an exhibit, all parties who subsequently cite to portions of the transcript shall cite to the first-filed exhibit rather than submitting another copy of the same transcript.

F. Pro Hac Vice Admission

The Board may recognize counsel *pro hac vice* during a proceeding upon a showing of good cause. 37 C.F.R. § 42.10(c). The parties are authorized in the Notice of Filing Date Accorded to Petition to file motions

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