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**Subject:** IPR2022-00031: Proposal from the Parties on further conduct of the proceedings  
**Date:** Friday, June 9, 2023 4:42:47 PM  
**Attachments:** [image001.png](#)

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Pursuant to the Board's direction, the parties have met and conferred and jointly recommend the following further proceedings in the above-noted IPR proceeding.

### First Phase

- **Due Date 1:** Two weeks from the Board's Order following the joint proposal, each party files one brief not exceeding 7000 words.
  - MemoryWeb files brief addressing:
    - Why good cause exists to raise RPI/estoppel issue now pursuant to 37 CFR 42.5(c)(3) and 42.25(b),
    - Why the late consideration of supplemental information MemoryWeb possessed before this proceeding was instituted serves the interests of justice pursuant to 37 CFR 42.123(b),
    - MemoryWeb's motion for additional discovery from Apple on the RPI issue, and
    - MemoryWeb's motion for additional discovery from Unified Patents on the RPI issue.
  - Apple files brief addressing why MemoryWeb has waived and/or forfeited its ability to raise the RPI/estoppel issue.
- **Due Date 2:** Three weeks from service of opening round briefs, each party files one brief not exceeding 3500 words.
  - Apple responds to MemoryWeb's opening brief.
  - MemoryWeb responds to Apple's opening brief.
  - Apple may also present conditional discovery requests of Unified if discovery is authorized.

### Second Phase

- **Due Date 3:** If the Board authorizes briefing on estoppel, submission of additional information and additional discovery, then within 15 days of the Board's Order:
  - MemoryWeb will file as exhibits in this proceeding the non-confidential exhibits in IPR2021-01413 pertaining to RPI.
  - Apple will produce to MemoryWeb responsive non-privileged documents as follows: (i) all communications with Unified relating to MemoryWeb, the '228 patent, the Unified IPR, or this IPR (IPR2022-00031); and (ii) all agreements or contracts between Apple and Unified, including Apple's membership agreement and any amendments or add-ons
  - Apple may provide a declaration from a witness familiar with the documents it is producing. MemoryWeb would be allowed a 4 hour deposition of that witness.
  - If a deposition of a Unified witness is conducted, Apple shall be entitled to participate and separately examine the witness after MemoryWeb has completed its examination.

- The parties agree to negotiate with Unified in good faith regarding the production of documents and deposition scheduling and scope.
  - The parties have a disagreement about and reserve their positions on the admissibility and permissible use in this proceeding of the prior Jakel deposition transcript (*i.e.*, EX2036 in IPR2021-01413).
- Any deposition of a witness shall be conducted on a date acceptable to the parties, notwithstanding Due Date 3.
- **Due Date 4:** Within 14 days of completion of authorized discovery from Apple and Unified Patents, MemoryWeb may file a Motion to Terminate of up to 7000 words.
  - MemoryWeb's motion for relief may address at least: (1) estoppel under 35 U.S.C. § 315(e)(1) as to claims 1-7, including addressing Apple's RPI status in the Unified IPR, and (2) discretionary estoppel based on at least 35 U.S.C. § 315(d), 37 CFR § 42.72, and 37 CFR § 42.5 as to claims 8-19.
- **Due Date 5:** Within 21 days of MemoryWeb's Motion to Terminate, Apple may file a response to MemoryWeb's Motion to Terminate of up to 7,000 words.
  - If Apple submits a declaration after Due Date 4, Apple will make declarant available for deposition within 7 days of Due Date 5, and MemoryWeb may file a Motion for Observations on the cross examination of the reply witness (not to exceed 1,000 words) within 7 days of the deposition.
- **Due Date 6:** Two weeks before oral hearing each party may file a motion to exclude.
- **Due Date 7:** One week before the Oral Hearing, each party may file an opposition to the other party's Motion to Exclude (if any)
- **Due Date 8:** Oral hearing (the Board's convenience prior to the statutory deadline).
  - The parties agree that, at the oral hearing, MemoryWeb may present arguments that would otherwise have been submitted in a Reply and Apple may respond to those arguments that would have otherwise been submitted in a Sur-Reply, as well as any observations by MemoryWeb on a deposition under Due Date 5.

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