

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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C&D ZODIAC, INC.,  
Petitioner,

v.

B/E AEROSPACE, INC.,  
Patent Owner.

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Case IPR2017-01275 (Patent 9,073,641)  
Case IPR2017-01276 (Patent 9,440,742)  
Case PGR2017-00019 (Patent D764,031)

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Before JENNIFER S. BISK, MICHAEL J. FITZPATRICK, and  
SCOTT A. DANIELS, *Administrative Patent Judges*.

BISK, *Administrative Patent Judge*.

SCHEDULING ORDER  
*37 C.F.R. § 42.5*

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Case PGR2017-00019 (Patent D764,031)

## A. GENERAL INSTRUCTIONS

### *1. Requests for an Initial Conference Call*

Unless a party requests otherwise, we will not conduct an initial conference call as described in the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012). To request an initial conference call, a party shall do so no later than 21 days after the institution of trial. A request for a conference call shall include: (a) a list of proposed motions, if any, and topics to be discussed during the call and (b) a list of dates and times when the parties are available for the call. The parties shall be prepared to discuss during the initial conference call their concerns, if any, relating to the schedule in this proceeding as set forth below.

### *2. Protective Order*

A protective order does not exist in this proceeding unless and until the parties file a proposed protective order and the Board approves it. We encourage the parties to adopt the Board’s default protective order if they conclude that a protective order is necessary. *See* Default Protective Order, Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,771 (Appendix B). If the parties propose a protective order deviating from the default protective order, they must submit the proposed protective order along with a marked-up comparison of the proposed and default protective orders showing the differences.

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### *3. Motions to Amend*

Patent Owner may file a motion to amend without prior authorization from the Board. Nevertheless, Patent Owner must confer with the Board before filing such a motion. *See* 37 C.F.R. § 42.121(a). Patent Owner should arrange for a conference call with the panel and opposing counsel at least one week before DUE DATE 1 in order to satisfy the conferral requirement.

### *4. Discovery Disputes*

If 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, a 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 to resolve a discovery dispute, the requesting party shall: (a) certify that it has conferred with the other party in an effort to resolve the dispute; (b) identify with specificity the issues for which agreement has not been reached; (c) identify the precise relief to be sought; and (d) propose specific dates and times during which both parties are available for the conference call.

### *5. Depositions*

The Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,772–71 (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,

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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.

Whenever a party submits a deposition transcript as an exhibit in this proceeding, the submitting party shall file the full transcript of the deposition and not mere excerpts of specific portions being cited.

#### *6. Cross-Examination*

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

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.*

#### *7. Observations on Cross-Examination*

A party may file one paper containing observations on cross-examination of one or more reply witnesses when no further substantive paper is permitted after the reply. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,768. Each observation 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, and the entire paper must comply with the page limit requirement for motions as set forth in 37 C.F.R. § 42.24(a)(1)(v). The opposing party may file a responsive paper containing equally concise and specific

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responses to the observations, which paper must comply with the same page limit requirement.

## B. DUE DATES

This Order sets due dates for the parties to take action after institution of the proceeding. 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 the stipulation, specifically identifying the changed due dates, must be promptly filed. 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.

### *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. The patent owner is cautioned that any patentability arguments that are relevant to a ground on which trial has been instituted and which are not raised in a response will be deemed waived.

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