

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DEVELOPMENTAL TECHNOLOGIES, LLC,  
Petitioner,

v.

E.I. DU PONT DE NEMOURS AND COMPANY,  
Patent Owner.

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Case IPR2018-00102  
Patent 9,848,543 B2

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Before SCOTT A. DANIELS, CARL M. DEFRANCO, and  
RYAN H. FLAX, *Administrative Patent Judges*.

DEFRANCO, *Administrative Patent Judge*.

SCHEDULING ORDER  
*37 C.F.R. § 42.5(a)*

This Order sets a schedule for trial, including due dates for the parties to take action upon entry of the Decision to Institute. 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. *Initial Conference Call*

An initial conference call will be scheduled only if either party needs to discuss a proposed change to this order and/or a proposed motion not otherwise authorized by this order. To request a conference call, the parties should consult with each other and submit a list of proposed dates and times for the call and a list of proposed motions to be discussed during the call. 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) (“Trial Practice Guide”), for guidance in preparing for the call.

### B. *Meet and Confer Requirement*

The parties must engage in meaningful discussions before seeking authorization under 37 C.F.R. § 42.20(b) to file a motion for relief with the Board. Only if the parties fail to resolve a dispute on their own may either party request a conference call with the Board to seek authorization to file a motion for relief. Any request for a conference call shall (a) certify that the parties have conferred in good-faith in an attempt to resolve the dispute on their own, (b) identify with specificity, but without argument, the nature of the dispute, (c) state the precise relief sought, and (d) propose specific dates and times when *both parties* are available for the requested conference call.

### C. *Protective Order*

No protective order shall apply to this proceeding until the Board enters one. If either party files a motion to seal 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* Default Protective Order, Trial Practice Guide, 77 Fed. Reg. at 48,756 (App'x B). If the parties choose to propose a protective order deviating from the default protective order, they must submit (a) the proposed protective order jointly, along with a marked-up comparison of the proposed and default protective orders showing the differences between the two orders and (b) 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* Trial Practice Guide, 77 Fed. Reg. at 48,761.

*D. Testimony*

The parties are reminded that the Testimony Guidelines appended to the Trial Practice Guide, 77 Fed. Reg. at 48,772 (App'x 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—  
(a) cross-examination of a witness ordinarily begins after any supplemental evidence is due, and (b) cross-examination ordinarily 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.

*E. Patent Owner Response*

If Patent Owner elects not to file a response to the petition, Patent Owner must arrange a conference call with the Board. Under no circumstances is Patent Owner permitted to incorporate by reference arguments from other documents, such as its preliminary response, into its Patent Owner response. ***Patent Owner is cautioned that any arguments for patentability not raised and fully briefed in the Patent Owner response will be deemed waived.***

*F. Motion to Amend*

Patent Owner may file a motion to amend without prior authorization from the Board, but nonetheless must confer with the Board before filing such a motion. 37 C.F.R. § 42.121(a). To fulfill this requirement, Patent Owner should request a conference call with the Board no later than two weeks prior to DUE DATE 1.

Patent Owner has the option to receive preliminary guidance from the Board on its motion to amend. *See Notice Regarding a New Pilot Program Concerning Motion to Amend Practice and Procedures in Trial Proceedings under the America Invents Act before the Patent Trial and Appeal Board*, 84 Fed. Reg. 9497 (Mar. 15, 2019) (“MTA Pilot Program Notice”). If Patent Owner elects to receive preliminary guidance from the Board, it must do so in its motion to amend filed on DUE DATE 1. Any motion to amend and briefing related to such a motion shall generally follow the practices and procedures described in the MTA Pilot Program Notice, unless otherwise ordered by the Board in this proceeding. The parties are further directed to the Board’s guidance on motions to amend in *Lectrosonics, Inc. v. Zaxcom, Inc.*, Case IPR2018-01129, Paper 15 (PTAB Feb. 25, 2019) (precedential).

*G. Request for Oral Hearing*

Any request for an oral hearing must comply with 37 C.F.R. § 42.70(a). To permit the Board sufficient time to schedule the hearing, the parties may not stipulate to an extension of the request for oral hearing beyond DUE DATE 4. Unless the Board notifies the parties otherwise, a hearing, if requested, will be held at the United States Patent and Trademark Office headquarters in Alexandria, Virginia. Seating in the Board’s hearing rooms may be limited, and will be available on a first-come, first-served basis. If either party anticipates that more than five (5) individuals will attend the hearing on its behalf, the party should notify the Board as soon as possible, and no later than the deadline for requesting a hearing. The parties should note that the earlier a request for accommodation is made, the more likely the Board will be able to accommodate the request.

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