

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DONG GUAN LEAFY WINDOWARE CO. LTD.,
Petitioner,

v.

ANLI SPRING CO., LTD. and
HSIEN-TE HUANG,
Patent Owner.

PGR2020-00001
Patent 10,174,547 B2

Before GEORGE R. HOSKINS, MICHAEL L. WOODS, and
SCOTT C. MOORE, *Administrative Patent Judges*.

HOSKINS, *Administrative Patent Judge*.

REVISED SCHEDULING ORDER
37 C.F.R. § 42.5

When we instituted trial in this proceeding on April 20, 2020, we entered a Scheduling Order (Paper 8) setting forth various filing deadlines and containing various provisions for governing the trial. Now, at this time, we conclude the Scheduling Order needs to be amended to account for a revised motion to amend filed by Patent Owner, and to discuss procedures relating to any potential oral argument hearing. Except for the changed described below, the original Scheduling Order remains in effect.

A.6. GENERAL INSTRUCTIONS — Motion to Amend

a) *Introduction*

On November 20, 2020, Patent Owner filed a revised motion to amend (Paper 23, “revised MTA”) in accordance with our Scheduling Order and the March 15, 2019, Federal Register notice regarding a pilot program relating to motion to amend practice at the Office. *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. 9,497 (Mar. 15, 2019) (“MTA Pilot”). In accordance with the MTA Pilot, we revise our original Scheduling Order to set subsequent due dates based on the date Patent Owner filed its revised MTA. *See* MTA Pilot, Appendix 1B (Revised MTA Timeline).

In particular, this Revised Scheduling Order adds DUE DATES RMTA1 and RMTA2 and modifies and supercedes DUE DATE 4 and subsequent due dates as presented in our original Scheduling Order. Further, this Revised Scheduling Order supplements the instructions provided in our original Scheduling Order, including those discussing the content of the briefing related to the revised MTA. To the extent our original Scheduling

Order provides instructions that are not addressed in this Revised Scheduling Order, the original instructions remain in effect.

b) Evidence and Depositions

Generally speaking, new evidence (including declarations) may be submitted with every paper related to the revised MTA, except sur-replies. Specifically, both Petitioner's opposition to the revised MTA and Patent Owner's reply to that opposition may be accompanied by new evidence that responds to issues raised in the preliminary guidance (if provided) or in the corresponding revised MTA or opposition. Petitioner's sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.

Once likely declarants are known, the parties should confer as to dates for scheduling all depositions related to the revised MTA after the relevant papers will be filed. The Board expects parties to make their declarants available for such depositions promptly, and to make their attorneys available to take and defend such depositions; any unavailability will not be a reason to adjust the schedule for briefing on a revised MTA absent extraordinary circumstances.

If Petitioner submits a declaration with its opposition to the revised MTA, or Patent Owner submits a declaration with its reply to that opposition, the party should typically make such declarant available for deposition within 1 week after filing that declaration. As needed, the parties may wish to agree to shortened periods for making objections and serving supplemental evidence prior to a deposition. *See* 37 C.F.R. §§ 42.53(d)(2), 42.64(a) and (b). In the absence of such an agreement, the parties shall schedule such depositions in advance of a due date for serving supplemental

evidence. If, after receiving supplemental evidence, a party believes in good faith that the supplemental evidence requires further cross-examination of a declarant, the party should contact the Board for a conference call. Again, it is incumbent upon the parties to work cooperatively to schedule depositions of their declarants. Thus, the Board strongly encourages the parties to meet and confer as soon as practicable (including before anticipated declarations are submitted, if possible) to coordinate schedules.

Because Patent Owner's reply and Petitioner's sur-reply as to the revised MTA are due near or after motions to exclude are due, the parties might not have an opportunity to object to evidence submitted with the reply or sur-reply and file a motion to exclude such evidence before the oral hearing. *See* 37 C.F.R. § 42.64. Thus, if needed, a party may seek authorization to file a motion to exclude reply or sur-reply evidence prior to the oral hearing or may make an oral motion to exclude and argue such a motion at the oral hearing.

A.7. GENERAL INSTRUCTIONS — Oral Argument

Our original scheduling order stated: "Unless the Board notifies the parties otherwise, oral argument, if requested, will be held at the Denver, Colorado, USPTO Regional Office." Paper 8, 6. However, at the present time, the Board is conducting all of its AIA trial hearings via videoconference, due to the state of affairs relating to COVID-19. In the event either party requests oral argument, we encourage the parties to meet and confer with each other to discuss whether they would prefer an in-person hearing (which the Board may not be able to accommodate), or a video conference hearing (which at this time, is the only hearing method the

Board is implementing), and inform the Board of the results in the request for oral argument.

B. DUE DATES

This Order sets due dates for the parties to take action by DUE DATE RMTA1 and after. The parties may stipulate to different dates for DUE DATES RMTA1, RMTA2, 5, and 6 (earlier or later, but no later than DUE DATE 7). 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 4, 7, and 8.

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 (§ 42.64(b)(2)), to conduct cross-examination (§ 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony.

1. DUE DATE RMTA1

Petitioner may file an opposition to Patent Owner's revised MTA. Petitioner's opposition to the revised MTA may only respond to issues raised in the revised MTA or the preliminary guidance (Paper 21).

2. DUE DATE 4

Either party may file a request for oral argument (may not be extended by stipulation).

3. DUE DATE RMTA2

Patent Owner may file a reply to Petitioner's opposition to the revised MTA. Patent Owner's reply to the opposition may only respond to issues raised in the opposition.

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