

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LIBERTY MUTUAL INSURANCE CO.  
Petitioner

v.

PROGRESSIVE CASUALTY INSURANCE CO.  
Patent Owner

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Case CBM2012-00003 (JL)  
Patent 8,140,358

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Before JAMESON LEE, JONI Y. CHANG, and MICHAEL R. ZECHER,  
*Administrative Patent Judges.*

Chang, *Administrative Patent Judge*

**FIRST REVISED SCHEDULING ORDER**

**A. DUE DATES**

This order sets due dates for the parties to take action in this trial. The parties may stipulate to different dates for DUE DATES 1 through 3 (earlier or later, but no later than DUE DATE 4). 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.

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 (*see* Section B).

The parties are reminded that the Testimony Guidelines appended to the *Office Patent Trial Practice Guide*, 77 *Fed. Reg.* 48756, 48772 (Aug. 14, 2012) (Appendix D), apply to this trial. The Board may impose an appropriate sanction for failure to adhere to the Testimony Guidelines. 37 C.F.R. § 42.12. For example, 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.

## **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. If the patent owner elects not to file anything, the patent owner must arrange a conference call with the parties and the Board. The patent owner is cautioned that any arguments for patentability not raised and fully briefed in the response will be deemed waived.

## **2. DUE DATE 2**

The petitioner must file any reply to the patent owner's response and opposition to the motion to amend by DUE DATE 2.

## **3. DUE DATE 3**

The patent owner must file any reply to the petitioner's opposition to patent owner's motion to amend by DUE DATE 3.

## **4. DUE DATE 4**

a. The petitioner must file any motion for an observation on the cross-examination testimony of a reply witness (*see* Section C) by DUE DATE 4.

b. Each party must file any motion to exclude evidence (37 C.F.R. § 42.64(c)) and any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 4.

## **5. DUE DATE 5**

a. The patent owner must file any reply to a petitioner observation on cross-examination testimony by DUE DATE 5.

b. Each party must file any opposition to a motion to exclude evidence by DUE DATE 5.

## **6. DUE DATE 6**

Each party must file any reply for a motion to exclude evidence by DUE DATE 6.

## **7. DUE DATE 7**

The oral argument (if requested by either party) is set for DUE DATE 7.

### **B. 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.*

### **C. MOTION FOR OBSERVATION ON CROSS-EXAMINATION**

A motion for observation on cross-examination provides the petitioner with a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness, since no further substantive paper is permitted after the reply. *See Office Patent Trial Practice Guide, 77 Fed. Reg. at 48768.* The 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. The patent owner may respond to the observation. Any response must be equally concise and specific.

**DUE DATE APPENDIX**

**DUE DATE 1..... June 5, 2013**

- Patent owner's response to the petition
- Patent owner's motion to amend the patent

**DUE DATE 2..... August 1, 2013**

- Petitioner's reply to patent owner response to petition
- Petitioner's opposition to motion to amend

**DUE DATE 3..... August 28, 2013**

- Patent owner's reply to petitioner opposition to motion to amend

**DUE DATE 4..... September 16, 2013**

- Petitioner's motion for observation regarding cross-examination of reply witness
- Motion to exclude evidence
- Request for oral argument

**DUE DATE 5..... September 25, 2013**

- Patent owner's response to observation
- Opposition to motion to exclude

**DUE DATE 6..... October 1, 2013**

- Reply to opposition to motion to exclude

**DUE DATE 7..... October 8, 2013**

- Oral argument (if requested)