

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CRS ADVANCED TECHNOLOGIES, INC.
Petitioner

v.

FRONTLINE TECHNOLOGIES, INC.
Patent Owner

Case CBM2012-00005
Patent 6,675,151

Before SALLY C. MEDLEY, THOMAS L. GIANNETTI, and JENNIFER
S. BISK, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On February 7, 2013, the following individuals participated in the
initial conference call:¹

¹ The initial conference call is held to discuss the Scheduling Order and any motions that the parties anticipate filing during the trial. Office Patent Trial Practice Guide, 77 *Fed. Reg.* 48756, 48765 (Aug. 14, 2012).

- (1) Mr. Aaron Capron,² counsel for CRS;
 - (2) Mr. John Donohue and Mr. John McGlynn,³ counsel for Frontline;
- and
- (3) Sally Medley, Jennifer Bisk, and Thomas Giannetti,
- Administrative Patent Judges.

Motions list

In preparation for the initial call, the parties filed motions lists. (Papers 27 and 29). The purpose of the motions list is to provide the Board and an opposing party adequate notice to prepare for the initial call and the proceeding. *See, e.g.*, 37 C.F.R. § 42.21(a) and Office Patent Trial Practice Guide, 77 *Fed. Reg.* 48756, 48765 (Aug. 14, 2012). A motions list, however, is not the opportunity for a party to submit the motion itself. Rather, the list should contain a short, concise statement generally relaying enough information for the Board and opposing counsel to understand the proposed motion.

As explained during the call, both parties failed to comply with these requirements. For example, CRS seeks authorization to file a sole motion for an expedited schedule. (Paper 29). Instead of a short explanation, CRS provides facts, arguments, and a proposed schedule totaling nearly six pages. In essence, CRS' motions list is the motion itself. Another example of an improper request is found in Frontline's motions list. There, Frontline requests that the initial conference call be postponed. Again, such a request is in reality the motion itself and not a request to file a motion. In light of

² Mr. Darrel Karl, counsel for CRS in the related litigation was also present. Counsel for Frontline did not object to Mr. Karl's attendance.

³ Mr. R. Scott Tewes, counsel for Frontline in the related litigation was also present. Counsel for CRS did not object to Mr. Tewes' attendance.

counsel for both parties' representation that they did not fully appreciate the substantive nature of "the motions list," the Board determined not to dismiss either party's list. However, any future motions list that is not in compliance with established procedures may result in dismissal or expungement, for example, of the list.

The Proposed Motions

Frontline requests that the Board establish a process and schedule for resolving the meaning of claim terms. (Paper 27 at 3). In essence, Frontline requests that the Board have a separate claim construction proceeding prior to any of the other scheduled events, *e.g.*, before the due dates for filing a patent owner post-institution response to the petition or any motion to amend.

As explained during the call, such a process is neither desired nor necessary. The Board, in its decision to institute the covered business method review, set forth a construction of certain claim terms. (Paper 17 at 4-6). To the extent that Frontline disagrees with that construction, Frontline will have opportunity to explain, with evidence, why the claim construction adopted by the Board should not be followed and/or what construction should apply. That opportunity is available in the form of a patent owner post-institution response. Counsel for Frontline did not explain to the Board's satisfaction why the ordinary course, *e.g.*, addressing claim construction in its patent owner post-institution response, should not be followed in this proceeding. Accordingly, Frontline's request for a claim construction proceeding prior to the other scheduled events was not authorized. As a result of the Board not authorizing such a claim construction proceeding, counsel for Frontline withdrew Frontline's request

for additional discovery listed on page 4 (items 1 and 2) of Frontline's motions list.

The Board suggested, and counsel agreed, to postpone a discussion of any proposed motion to amend that Frontline intends to file. A time and date for revisiting that issue is set per this order. Counsel for Frontline represented that Frontline requests to file no other motion.

CRS requests authorization to file a motion to expedite times and Frontline requests to file a motion to extend times. The Board considered the merits of the arguments during the conference call.

CRS requests that the Board expedite Due Dates 1-7. Frontline requests that the Board extend Due Dates 1-3. The sole issue for trial is whether six claims of the '151 patent are unpatentable under 35 U.S.C. § 101. In light of this, a compressed schedule of due dates was initially set. Based on the facts presented during the conference call, the Board was not persuaded to change the current, already-compressed schedule.

Counsel for Frontline was reminded that Frontline has had ample notice of the challenges to the '151 patent from the time the petition was filed nearly five months ago. The issues for trial have been streamlined and simplified even further. Counsel for Frontline did not present an adequate factual basis to support a good cause showing for extending the Scheduling Order Due Dates 1-3. 37 C.F.R. § 42.5(c)(2). Nor was the Board persuaded that all of the Due Dates 1-7 should be expedited as CRS requests. The schedule already has been compressed and thus, the panel has determined that in order to resolve this proceeding in a speedy, yet just manner, the current schedule strikes a proper balance between the competing interests of the parties. 37 C.F.R. § 42.1(b). The parties were reminded that they may

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stipulate different dates for Due Dates 1 through 3. The parties were encouraged to consider doing so. The Board explained that it would consider expediting Due Dates 4-7 if the parties agreed upon a schedule for Due Dates 1-3. For all of the above reasons,

It is

ORDERED that CRS' request that the Board expedite Due Dates 1-7 is DENIED;

FURTHER ORDERED that Frontline's request that the Board extend Due Dates 1-3 is DENIED;

FURTHER ORDERED that a conference call is scheduled for 1:00 PM ET on February 21, 2013 to discuss any motion to amend Frontline intends to file; and

FURTHER ORDERED that the parties be prepared to discuss any proposed motion to amend the claims.

PETITIONER:

E. Robert Yoches
Finnegan, Henderson, Farabow
Garrett & Dunner, LLP
bob.yoches@finnegan.com

PATENT OWNER:

John P. Donohue, Jr.
John E. McGlynn
Woodcock Washburn
donohue@woodcock.com
mcglynn@woodcock.com