

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIBERTY MUTUAL INSURANCE COMPANY
Petitioner,

v.

PROGRESSIVE CASUALTY INSURANCE COMPANY
Patent Owner,

Case CBM2013-00009 (JL)
Patent 8,140,358

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

LEE, *Administrative Patent Judge.*

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

A telephone conference call was held on September 4th, 2013, between Judges Lee, Chang, and Zecher, and respective counsel for the parties. The subject matter of the call was the timing of the cross examination of Petitioner's reply declarants by the Patent Owner. Petitioner has offered the declarants for cross-examination on September 6th and 10th, but lead counsel for Patent Owner is unavailable during that time. Also, because of other matters in litigation, lead

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counsel for Patent Owner will be unavailable to conduct the cross-examination until September 23rd, 2013. Patent Owner has proposed to postpone oral hearing in this case by more than three weeks, from October 8th, 2013, to October 30th, and beyond.

Even if cross-examination of reply declarants is not conducted until September 23rd, when Patent Owner's lead counsel is available, the circumstance does not justify postponement of oral hearing by more than three weeks. We note, however, that counsel for Patent Owner has indicated that one backup counsel is available to conduct the cross examination on September 6th or 10th, or sometime during the week of September 16th when the witnesses may be available. Counsel for Petitioner has indicated that Petitioner can submit its response to observations on cross-examination within four days of the filing of the observations.

It is

ORDERED that Due Date 7, the date of oral hearing in this trial, is herein reset to October 15th, 2013; and

FURTHER ORDERED that the parties may stipulate to different Due Dates 4-6 so long as none is later than Due Date 7, to accommodate the scheduling requirements on both sides, and that such stipulation shall be filed prior to any Due Date that is changed by the stipulation.

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By Electronic Transmission

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