

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.  
Petitioner

v.

SIGHTSOUND TECHNOLOGIES, LLC  
Patent Owner

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Case CBM2013-00023  
Patent 5,966,440

Before MICHAEL P. TIERNEY, JUSTIN T. ARBES, and  
GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

ARBES, *Administrative Patent Judge*.

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 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 response to the petition (37 C.F.R. § 42.120). The patent owner must file any such response 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.

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2. DUE DATE 2

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

3. DUE DATE 3

None.

4. DUE DATE 4

a. The patent owner 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 petitioner must file any reply to a patent owner 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 parties 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 Trial Practice Guide*, 77 Fed. Reg. 48756, 48768 (Aug. 14, 2012). 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 opposing party may respond to the observation. Any response must be equally concise and specific.

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DUE DATE APPENDIX

DUE DATE 1.....January 3, 2014

Patent owner's response to the petition

DUE DATE 2.....March 21, 2014

Petitioner's reply to patent owner response to petition

DUE DATE 3

None<sup>1</sup>

DUE DATE 4

Motion to exclude evidence.....April 4, 2014

Request for oral argument.....April 4, 2014

Patent Owner's motion for observation regarding

cross-examination of reply witness.....April 11, 2014

DUE DATE 5.....April 18, 2014

Petitioner's response to observation

Opposition to motion to exclude

DUE DATE 6.....April 25, 2014

Reply to opposition to motion to exclude

DUE DATE 7.....May 6, 2014

Oral argument (if requested)

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<sup>1</sup> The patent owner was permitted to file a motion to amend under 37 C.F.R. § 42.121 by DUE DATE 1, but did not do so. *See* Paper 13. Accordingly, no deadlines are set for a corresponding opposition from the petitioner and reply from the patent owner. The numbering of due dates remains the same, however, to maintain consistency with the original trial schedule.

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