

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LKQ CORPORATION
Petitioner

v.

CLEARLAMP, LLC
Patent Owner

Case IPR2013-00020
Patent 7,297,364

Before SALLY C. MEDLEY, KEVIN F. TURNER, and JOSIAH C. COCKS
Administrative Patent Judges.

COCKS, *Administrative Patent Judge.*

SCHEDULING ORDER

A. DUE DATES

This order sets due dates for the parties to take action in this trial. The parties may stipulate to difference 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 DUES DATES 4-7.

In stipulating to difference 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 file papers relying on the evidence and cross-examination testimony (*see* section B, below).

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 proceeding. 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 attorney fees incurred by a 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).

Any such response or motion to amend by the Patent Owner must be filed by

DUE DATE 1. If the Patent Owner elects not to file anything, the Patent Owner must initiate a joint conference call with the Petitioner and the Board prior to DUE DATE 1.

2. DUE DATE 2

The Petitioner may file a reply to the Patent Owner's response and an opposition to the Patent Owner's motion to amend. Any such filing must be made by DUE DATE 2.

3. DUE DATE 3

The Patent Owner may file a reply to the Petitioner's opposition to Patent Owner's motion to amend. Any such filing must be made by DUE DATE 3.

4. DUTE DATE 4

a. The Petitioner may file a motion for an observation on the cross-examination testimony of a reply witness. (*See* section C, below). Any such filing must be made by DUE DATE 4.

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

5. DUE DATE 5

a. The Patent Owner may file a reply to a Petitioner's observation on cross-examination testimony. Any such filing must be made by DUE DATE 5.

b. Each party may file an opposition to a motion to exclude evidence. Any such filing must be made by DUE DATE 5.

6. DUE DATE 6

Each party may file a reply to an opposition to a motion to exclude evidence. Any such filing must be made 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 Trial Practice Guide, 77 Fed. Reg. 48756, 48768 (Aug. 14, 2012). The 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..... July 1, 2013

- Patent Owner’s response to the petition
- Patent Owner’s motion to amend the patent

DUE DATE 2.....September 30, 2013

- Petitioner’s reply to Patent Owner’s response to petition
- Petitioner’s opposition to Patent Owner’s motion to amend

DUE DATE 3..... October 29, 2013

- Patent Owner’s reply to Petitioner’s opposition to Patent Owner’s motion to amend

DUE DATE 4.....November 19, 2013

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

DUE DATE 5.....December 3, 2013

- Patent Owner’s response to observation
- Opposition to motion to exclude evidence

DUE DATE 6..... December 10, 2013

- Reply to opposition to motion to exclude evidence

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