

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NUVASIVE, INC.
Petitioner

v.

WARSAW ORTHOPEDIC, INC.
Patent Owner

Case IPR2013-00206 (SCM)
Patent 8,251,997 B2

Before SALLY C. MEDLEY, LORA M. GREEN, and STEPHEN C. SIU
Administrative Patent Judges.

SIU, *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 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 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 arrange a conference call with the parties and the Board. The patent owner is

cautioned that any argument for patentability not raised and fully briefed in the response will be deemed waived.

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..... **December 16, 2013**

Patent owner’s response to the petition
Patent owner’s motion to amend the patent

DUE DATE 2.....**March 5, 2013**

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

DUE DATE 3.....**April 4, 2013**

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

DUE DATE 4.....**April 25, 2013**

Petitioner’s motion for observation regarding
cross-examination of reply witness

Motion to exclude evidence

Request for oral argument

DUE DATE 5..... **May 9, 2013**

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

DUE DATE 6.....**May 16, 2013**

Reply to opposition to motion to exclude evidence

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.