

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARGET CORPORATION,
Petitioner

v.

DESTINATION MATERNITY CORPORATION,
Patent Owner

Case IPR2013-00533
Patent RE43,531 E

Before JENNIFER S. BISK, MICHAEL J. FITZPATRICK, and
MITCHELL G. WEATHERLY, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

SCHEDULING ORDER

A. DUE DATES

This order sets due dates for the parties to take action after institution of the proceeding. The parties may stipulate to different dates for DUE DATES 1–3 (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, below).

The parties are reminded that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,772 (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 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. 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).

The patent owner must file any such response or motion to amend 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 in the response will be deemed waived.

2. DUE DATE 2

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

3. DUE DATE 3

The patent owner must file any response to the petitioner's opposition to patent owner's motion to amend by DUE DATE 3.

4. DUE DATE 4

- a. The petitioner must file any observations on the cross-examination testimony of a reply witness (*see* section C, below) 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 patent owner must file any reply to petitioner observations 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. OBSERVATIONS ON CROSS-EXAMINATION

A paper setting forth observations 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 Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). An 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 patent owner may respond to the observation. Any response must be equally concise and specific.

DUE DATE APPENDIX

DUE DATE 1 April 28, 2014

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

DUE DATE 2 July 14, 2014

- Petitioner’s reply to patent owner response to petition
- Petitioner’s opposition to motion to amend

DUE DATE 3 August 12, 2014

- Patent owner’s reply to petitioner opposition to motion to amend

DUE DATE 4 September 2, 2014

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

DUE DATE 5 September 16, 2014

- Patent owner’s response to observation
- Opposition to motion to exclude

DUE DATE 6 September 23, 2014

- Reply to opposition to motion to exclude

DUE DATE 7 October 7, 2014

- Oral argument (if requested)

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