

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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IRON DOME LLC,  
Petitioner,

v.

E-WATCH, INC.,  
Patent Owner.

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Case IPR2014-00439  
Patent 7,365,871

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Before JAMESON LEE, GREGG I. ANDERSON, and  
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

ORDER  
Conduct of Proceedings  
37 C.F.R. § 42.5

### Introduction

On August 26, 2014, an initial telephone conference call was held. The participants were respective counsel for the parties and Judges Lee, Anderson, and Clements. Only Petitioner filed a proposed motions list (Paper 18). Counsel for Patent Owner indicated that its expert witness is not accessible until mid-September, but that no extension of Due Date 6 or 7 as set in the Scheduling Order of August 4, 2014 (Paper 17) would be required. Counsel for Petitioner and Patent Owner agreed to cooperate to permit short extensions of Due Dates 1–5, if necessary, by stipulation, as is authorized by the Scheduling Order. Other than the preceding, neither party expressed any objection to the dates set forth in the Scheduling Order.

### Discussion

The only item on Petitioner's proposed motions list is directed to additional discovery. Specifically, Petitioner seeks to obtain information on Patent Owner's conception, diligence, and reduction to practice of the invention of each challenged claim, in connection with any effort by the Patent Owner to antedate prior art references which form the basis of an alleged ground of unpatentability which has been instituted for trial. We explained that Patent Owner's Preliminary Response is not evidence or carried automatically over into the trial and that Patent Owner has not yet filed a Patent Owner Response subsequent to the institution of trial. Therefore, a reference to Patent Owner's attempt to antedate prior art is premature.

We indicated also that if and when Patent Owner submits declaration evidence as a part of the Patent Owner Response, to antedate prior art, Petitioner will be able, as a part of routine discovery, to cross-examine the declarants and

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obtain copies of documents relied on in the declaration(s). We confirmed that subsequent to institution of trial, Patent Owner has an opportunity, by way of the Patent Owner Response, to antedate the prior art, regardless of what was presented in connection with the Preliminary Response. In light of that discussion, counsel for Petitioner withdrew the request for authorization to file a motion for additional discovery.

We advised counsel for both parties that a Motion to Exclude Evidence should not be used to present issues on whether a Reply or evidence in support of a Reply exceeds the proper scope of a Reply. Instead, if an issue arises regarding the proper scope of a Reply, the parties should initiate a joint conference call with the Board to discuss the matter.

#### Order

It is ORDERED that Due Dates 1–7 as set forth in Paper 17 remain unchanged.

For PETITIONER:

Steven Yu  
ROZMED LLC  
[syu@patent-intercept.com](mailto:syu@patent-intercept.com)

For PATENT OWNER

Robert C. Curfiss  
David O. Simmons  
[bob@curfiss.com](mailto:bob@curfiss.com)  
[dsimmons1@sbcglobal.net](mailto:dsimmons1@sbcglobal.net)