

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FUJITSU NETWORK COMMUNICATIONS, INC.,
Petitioner,

v.

CAPELLA PHOTONICS, INC.,
Patent Owner.

Case IPR2015-00726
Patent RE42,368 E

Before JOSIAH C. COCKS, KALYAN K. DESHPANDE, and
JAMES A. TARTAL, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

CASE MANAGEMENT
AND SCHEDULING ORDER
37 C.F.R. § 42.5

A. GENERAL INSTRUCTIONS

1. *Requests for an Initial Conference Call*

An initial conference call is not scheduled in this case. A party may request an initial conference call within 25 days after the institution of trial. A party requesting an initial conference call shall: (a) identify the proposed motions, if any, to be discussed during the call; and (b) propose two or more dates and times when both parties are available for the call. When an initial conference call is scheduled in response to a request, the parties are directed to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012), for guidance in preparing for the initial conference call and should be prepared to discuss any proposed changes to the schedule in this proceeding.

2. *Protective Order*

A protective order will not be entered in this proceeding unless the parties file one and the Board approves it. The parties are encouraged to adopt the Board’s default protective order if a protective order is necessary. *See* Default Protective Order, Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, App. B (Aug. 14, 2012). If the parties choose to propose a protective order deviating from the default protective order, they must submit the proposed protective order along with a marked-up comparison of the proposed and default protective orders showing the differences. If either party files a motion to seal before entry of a protective order, a proposed protective order should be presented as an exhibit to the motion that has been discussed with the opposing party and, preferably, be jointly proposed. If the protective order is not jointly proposed, the proponent of the order

should identify where the parties differ in the proposed language of the order.

The Board has a strong interest in promoting public accessibility to the proceedings. If a party seeks to redact information from documents filed in this proceeding in accordance with a protective order, the redactions must be limited to isolated passages consisting entirely of confidential information, and the thrust of the underlying argument or evidence must remain clearly discernible.

Information subject to a protective order will nevertheless become public if identified in a final written decision in this proceeding. A motion to expunge information subject to a protective order will not prevail necessarily over the public interest in maintaining a complete and understandable file history. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,761.

3. *Depositions*

The parties are advised 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.

Whenever a party submits a deposition transcript as an exhibit in this proceeding, the submitting party shall file the full transcript of the deposition rather than excerpts of only those portions being cited. After a deposition

transcript has been submitted as an exhibit, all parties shall cite to the filed exhibit rather than submitting another copy of the same transcript.

4. *Discovery Disputes*

Parties are encouraged to resolve disputes relating to discovery on their own and in accordance with the precepts of securing a just, speedy, and inexpensive resolution, as set forth in 37 C.F.R. § 42.1(b). To the extent that a dispute arises between the parties relating to discovery, the parties shall meet and confer to resolve such a dispute before contacting the Board. If attempts to resolve the dispute fail, a party may request a conference call with the Board and the other party in order to seek authorization to move for relief.

In any request for a conference call with the Board to resolve a discovery dispute, the requesting party shall: (a) confirm that it has conferred in good faith with the other party in an effort to resolve the dispute; (b) identify with specificity the issues for which agreement has not been reached, but refrain from arguing the merits of the request; (c) identify the precise relief to be sought; and (d) propose two or more dates and times when both parties are available for the call.

5. *Motions to Amend*

Patent Owner may file a motion to amend without prior authorization from the Board. Nevertheless, Patent Owner must confer with the Board before filing such a motion. 37 C.F.R. § 42.121(a). The parties are directed to the Board's website for representative decisions relating to Motions to Amend, among other topics, available at:

http://www.uspto.gov/ip/boards/bpai/representative_orders_and_opinions.jsp.

6. *Cross-Examination*

Except as the parties might otherwise agree, for each due date—

- a. Cross-examination begins after any supplemental evidence is due. 37 C.F.R. § 42.53(d)(2).
- b. 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.*

7. *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 because 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). 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.

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.