

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JDS UNIPHASE CORPORATION,
Petitioner,

v.

CAPELLA PHOTONICS, INC.,
Patent Owner.

Case IPR2015-00731
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.

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