

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, INC.,
Petitioner,

v.

CONVERGENT MEDIA SOLUTIONS, INC.,
Patent Owner.

Case IPR2016-00047
Patent 8,640,183 B2

Before JAMESON LEE, LYNNE E. PETTIGREW, and
JOHN F. HORVATH, *Administrative Patent Judges*.

HORVATH, *Administrative Patent Judge*.

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

An initial telephone conference call was held on May 12, 2016. The participants were P. Andrew Riley, Kai Rajan, and Jonathan Stroud for Petitioner, Clay McGurk for Patent Owner, and Judges Horvath, Lee, and Pettigrew.

During the call, we advised the parties that they can mutually agree to change any of due dates 1 through 5, but could not change due dates 6 and 7 without Board approval. The parties agreed to all current due dates set forth in the Scheduling Order entered on April 13, 2016, and indicated they are available for trial on January 11, 2017.

We advised the parties that there is currently no Protective Order in this case. We further advised the parties that if they desire to protect any information they deem confidential, they should file a Motion to Seal that includes, as an exhibit, a signed acknowledgment binding the moving party to a protective order. If the motion is unopposed, the motion should also include, as another exhibit, a signed acknowledgement from the non-moving party. We encouraged the parties to operate under the default protective order. However, if the parties agree to operate under an alternative protective order, they should file a joint Motion to Seal, and include as exhibits the alternative protective order, a redline showing how the alternative protective order differs from the default protective order, and signed acknowledgments from both parties. The Motion to Seal should also explain why the confidentiality of the information sought to be protected outweighs the public interest in having an open record. A Protective Order will not be entered until Board approval.

We instructed the parties that Motions to Exclude should only be filed to challenge the admissibility of evidence under the Federal Rules of

Evidence. If an issue arises with regard to a paper being beyond its proper scope, e.g., by belatedly raising new issues or submitting new evidence, the parties shall contact the Board in a timely manner to raise the issue.

We reminded the parties that Motions for Observation on Cross-Examination should not be argumentative. Such motions provide a party who has no further opportunity to file a substantive paper to bring relevant deposition testimony to the Board's attention. Motions for Observation of Cross-Examination should consist of one or more observations, with each observation limited to one short paragraph identifying the testimony to be considered by the Board, and how it relates to evidence already of record.

We also instructed the parties that should Patent Owner decide to file a Motion to Amend, Patent Owner should arrange a conference call with the Board at least two weeks prior to filing the motion. During the conference call, the parties should be prepared to discuss the guidance on Motions to Amend found in *MasterImage 3D, Inc. v. RealD Inc.*, Case IPR2015-00040, slip op. at 2–3, Paper 42 (PTAB July 15, 2015) (precedential).

Lastly, we instructed Petitioner to file a brief statement indicating whether the parties have met and conferred regarding alternative dispute resolution, and whether the parties have reached any agreement in that regard.

ORDER

It is

ORDERED that all due dates set forth in the Scheduling Order entered on April 13, 2016 (Paper 12) remain unchanged at this time.

IPR2016-00047
Patent 8,640,183 B2

For PETITIONER:

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