

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY CORPORATION,
Petitioner,

v.

RAYTHEON COMPANY,
Patent Owner.

Case IPR2016-00209
Patent 5,591,678

Before JO-ANNE M. KOKOSKI, JENNIFER MEYER CHAGNON, and
JEFFREY W. ABRAHAM *Administrative Patent Judges*.

CHAGNON, *Administrative Patent Judge*.

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

A. GENERAL INSTRUCTIONS

1. Initial Conference Call

Unless at least one of the parties requests otherwise, we will not conduct an initial conference call as described in the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012). The parties are directed to contact the Board within one month of this Order if there is a need to discuss proposed changes to the schedule or any proposed motions. *See* 77 Fed. Reg. at 48,765–66 (guidance in preparing for the initial conference call).

2. Conference Calls with the Board

In any request for a conference call with the Board to resolve a dispute, the requesting party shall: (a) certify that it has conferred with the other party in an effort to resolve the dispute; (b) identify with specificity the issues for which agreement has not been reached; (c) identify the precise relief to be sought; and (d) propose specific dates and times at which both parties are available for the conference call. Prior to contacting the Board, however, we encourage the parties to resolve any disputes arising in the proceeding on their own and in accordance with the precepts set forth in 37 C.F.R. § 42.1(b).

3. Confidential Information

A protective order does not exist in this proceeding unless the parties file one and the Board approves it. If either party files a motion to seal before entry of a protective order, a jointly proposed protective order should be presented as an exhibit to the motion. The parties are encouraged to adopt the Board's default protective order if they conclude that a protective order is necessary. *See* 77 Fed. Reg. at 48,771 (App. B, Default Protective

Order). If the parties choose to propose a protective order deviating from the default protective order, they must submit the proposed protective order jointly.

The parties must file confidential information using the appropriate availability indicator in PRPS (e.g., “Board and Parties Only”), regardless of whose confidential information it is. It is the responsibility of the party whose confidential information is at issue, not necessarily the proffering party, to file the motion to seal, unless the party whose confidential information is at issue is not a party to this proceeding. Any motion to seal must include a certification that the moving party has in good faith conferred or attempted to confer with other affected parties in an effort to resolve any dispute. *See* 37 C.F.R. § 42.54(a).

The Board has a strong interest in the public availability of the proceedings. Redactions should be limited strictly to isolated passages consisting entirely of confidential information. The thrust of the underlying argument or evidence must be clearly discernable from the redacted version.

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

4. Motion to Amend

Although the filing of a Motion to Amend is authorized under our Rules, Patent Owner must confer with the Board before filing any Motion to Amend. *See* 37 C.F.R. § 42.121(a). We strongly encourage the parties to arrange for such a conference call with the Board no less than ten (10)

business days prior to the due date for filing the Motion to Amend. The parties also are directed to the Board's website for representative decisions relating to Motions to Amend among other topics. The parties may access these representative decisions at:
http://www.uspto.gov/ip/boards/bpai/representative_orders_and_opinions.jsp.

5. Depositions

The parties are advised that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,772 (App. D), apply to this proceeding. The Board may impose an appropriate sanction for failure to adhere to the Testimony Guidelines. *See* 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.

6. Cross-Examination

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

- a. Cross-examination begins after any supplemental evidence is due. *See* 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. *See 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* 77 Fed. Reg. at 48,768. 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.

B. 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 through 5 (earlier or later, but no later than DUE DATE 6). 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 6 and 7.

Regardless of whether the parties stipulate to a change of DUE DATE 4, for Board planning purposes, requests for oral argument must be filed no later than the date set forth in this order for DUE DATE 4.

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.

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

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