

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARTHREX, INC. and SMITH & NEPHEW, INC.,
Petitioner,

v.

VITE TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2016-00382
Patent 6,168,598 B1

Before WILLIAM V. SAINDON, BARRY L. GROSSMAN, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

SCHEDULING ORDER
37 C.F.R. § 42.5

A. GENERAL INSTRUCTIONS

1. Requests for an 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 must request an initial conference call if either party is aware of any conflicts or concerns with DUE DATES 6 or 7 set forth in the Appendix of this Scheduling Order.*** Any request for an initial conference call must be made no later than 25 days after the institution of trial.

2. Standing Procedure for Requests for Conference Calls

If the parties request a conference call, including an initial conference call, the parties must follow these procedures:

- a. Prior to requesting a conference call, the parties must confer in an effort to resolve any issue to be discussed with the Board, or be prepared to explain to the Board why such a conference was not possible.
- b. Parties may request a conference call by contacting the Board at the email address or telephone number listed above the caption of this Order. Requests via email are expected and preferred; requests via telephone should be reserved for time-critical circumstances. Requests by email must copy opposing counsel. Requests by telephone should include opposing counsel as practicable.
- c. The request must include a list of proposed issues and/or motions to be discussed during the call.

- d. The request may include a brief background discussion of the issue(s) and/or motion(s) to be discussed, but must not include arguments.
- e. The request must certify that the parties conferred in accordance with 2.a., and must indicate the result of the conference (e.g., whether the non-requesting party opposes or does not oppose the request).
- f. The request must include a list of dates and times when both parties are available for the call.

3. *Protective Order*

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. We encourage the parties to adopt the Board's default protective order if they conclude that 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 jointly along with a marked-up comparison of the proposed and default protective orders showing the differences; and the parties must explain why the proposed deviations from the default protective order are necessary.

The Board has a strong interest in the public availability of the proceedings. We advise the parties that redactions to documents filed in this proceeding should be limited to isolated passages consisting entirely of confidential information, and that the thrust of the underlying argument or

evidence must be clearly discernible from the redacted versions. We also advise the parties that information subject to a protective order will become public if identified in a final written decision in this proceeding, and that a motion to expunge the information will not necessarily prevail over the public interest in maintaining a complete and understandable file history. *See Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,761.*

4. 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. *See 37 C.F.R. § 42.121(a).* Patent Owner should arrange for a conference call with the panel and opposing counsel at least one week before DUE DATE 1 in order to satisfy the conferral requirement. We direct the parties 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. Discovery Disputes

The panel encourages parties to resolve disputes relating to discovery on their own and in accordance with the precepts 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: (1) certify that it has conferred with the other party in an effort to resolve the dispute; (2) identify with specificity the issues for which agreement has not been reached; (3) identify the precise relief to be sought; and (4) propose specific dates and times at which both parties are available for the conference call.

6. 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 who subsequently cite to portions of the transcript shall cite to the first-filed exhibit rather than submitting another copy of the same transcript.

7. 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).

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