

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
MICRON TECHNOLOGY, INC., and SK HYNIX, INC.,
Petitioner,

v.

ELM 3DS INNOVATIONS, LLC,
Patent Owner.

Cases¹

IPR2016-00386 (Patent 8,653,672)	IPR2016-00387 (Patent 8,841,778)
IPR2016-00388 (Patent 7,193,239)	IPR2016-00389 (Patent 8,035,233)
IPR2016-00390 (Patent 8,629,542)	IPR2016-00391 (Patent 8,796,862)
IPR2016-00393 (Patent 7,193,239)	IPR2016-00394 (Patent 8,410,617)
IPR2016-00395 (Patent 7,504,732)	

Before GLENN J. PERRY, BARBARA A. BENOIT, and FRANCES L.
IPPOLITO, Administrative Patent Judges.

IPPOLITO, *Administrative Patent Judge.*

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

¹ This Order addresses issues that are the same in each case. Therefore, we exercise our discretion to issue one Order to be filed in each case. The parties are not authorized to use this style heading for any subsequent papers.

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The initial conference call in the above proceeding was held on August 1, 2016 between counsels for Petitioner Samsung Electronics Co., LTD, Micron Technology, Inc., and SK Hynix, Inc.; Patent Owner ELM 3DS Innovations, LLC; and Judges Perry, Benoit, and Ippolito. The following subjects were discussed during the call.

A. Related Proceedings

The Board was advised that the litigation in the U.S. District Court for the District of Delaware that exists between the parties involving the patents at issue in these proceedings is currently stayed. The parties further indicated that there are several additional petitions seeking *inter partes* review of related patents. These additional petitions are awaiting decisions on whether *inter partes* review will be instituted.

B. Scheduling Order

The parties indicated that they are discussing potential modifications to DUE DATES 1–7. We remind the parties that they may stipulate to different dates for DUE DATES 1–5, as provided in the original Scheduling Order (Paper 14), by filing an appropriate notice with the Board. However, the parties are requested to file any request for oral hearing by original DUE DATE 4 as set forth in the Scheduling Order, that is, by February 21, 2017.

Additionally, the parties may not stipulate to modifications of DUE DATES 6 and 7. Any change to these dates must be granted by the Board. Further, because an *inter partes* review proceeding is conducted on a strict statutory timeline, we are not inclined generally to delay DUE DATES 6 and 7.

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C. Oral Hearing

Due to the number of related *inter partes* review proceedings, we requested that the parties provide us with a joint proposal as to the number of days necessary for oral argument. Paper 14, 2. Petitioner indicated that two days of oral argument with four and a half hours allotted to each side would be sufficient to address all proceedings in a “global” manner where common issues are presented together. Patent Owner proposed that two and a half days be allotted, allocating six and a half hours per side, and addressing each petition in seriatim. Patent Owner requested authorization to submit a proposal for the format of the oral hearing and requested authorization to present a tutorial separate from the oral hearing that would take place a week before the oral hearing.

Based on the number of related proceedings, additional days will be reserved for the oral argument, which originally was scheduled to take place on a single day, March 28, 2017. One or more hearing rooms will be reserved for a total of three (3) days to accommodate the parties’ anticipated need for additional hearing time. Our reservation of hearing room time does not require that an oral hearing must take place or that an oral hearing must utilize three (3) days. Rather, if a party desires oral argument, it must be requested by Due Date 4, as set forth in the original and Revised Scheduling Order, and, in that request, provide the amount of time requested for the hearing. *See* Paper 14. At this time, it is not necessary to decide the format of the oral hearing, which will be determined should an oral hearing be requested. As such, we deny Patent Owner’s request to submit a proposed

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format for the oral hearing. Additionally, based on the developed record, we deny Patent Owner's request to present a tutorial separate from the oral hearing. Patent Owner will have an opportunity to explain its arguments in its briefing, e.g., Patent Owner Response, and focus on those arguments at oral argument (if an oral hearing is requested).

D. Depositions

The parties indicated that there is some disagreement regarding the format of depositions that Patent Owner will take of Petitioner's expert. However, the parties further indicated that discussion between them on this issue is ongoing. That being the case, we encouraged the parties to resolve these disputes among themselves. Nonetheless, should the parties require the Board's assistance regarding this matter, please contact the Board with specific dates and times both parties are available for a conference call.

E. Protective Order

The parties have not requested a protective order. No protective order has been entered. The parties are reminded of the requirement for a protective order when filing a motion to seal. 37 C.F.R. § 42.54. If the parties have agreed to a proposed protective order, including the Standing Default Protective Order, 77 Fed. Reg. 48756, Appendix B (Aug 14, 2012), they should file a signed copy of the proposed protective order with the motion to seal. If the parties propose a protective order other than or departing from the default Standing Protective Order, Office Patent Trial Practice Guide, *id.*, they must submit a joint, proposed protective order, accompanied by a red-lined version based on the default Standing Protective

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Order in Appendix B to the Board's Office Patent Trial Practice Guide. *See id.* at 48769.

F. Motions

The parties did not file a list of proposed motions. Further, based on the discussion, we understand the parties do not anticipate filing any motions at this time. The parties are reminded that except as otherwise provided in the Rules, Board authorization is required before filing a motion. 37 C.F.R. § 42.20(b). A party seeking to file a non-preauthorized motion should request a conference to obtain authorization to file the motion. Additionally, the parties should confer before requesting a call with the Board.

Although the filing of a Motion to Amend is authorized under our Rules, Patent Owner must confer with us before filing any Motion to Amend, preferably at least ten (10) business days prior to DUE DATE 1.

G. Settlement

The parties advised the Board that there is no impending settlement.

ORDER

Accordingly, it is:

ORDERED that Patent Owner's requests to present a tutorial and to submit a proposed oral hearing format is *denied*.

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