

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WHATSAPP INC.,
Petitioner,

v.

TRIPLAY, INC.,
Patent Owner.

IPR2016-00717
Patent 8,874,677 B2

Before BENJAMIN D. M. WOOD, BRIAN J. MCNAMARA, and
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

WOOD, *Administrative Patent Judge*.

SCHEDULING ORDER

A. *GENERAL INSTRUCTIONS*

1. *Requests for an Initial Conference Call*

No initial conference call is scheduled for this case. The parties may contact the Board to request a call if any issue arises during trial.

2. *Standing Procedure for Requests for Conference Calls*

In any request for a conference call with the Board, the requesting party shall: (a) certify that it has conferred with the other party in an effort to resolve any dispute; (b) identify with specificity the issues for which agreement has not been reached; (c) identify the precise relief to be sought; (d) state whether the other party opposes the relief to be sought; and (e) 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 37 C.F.R. § 42.1(b).

3. *Motion to Amend*

Patent Owner is reminded that it must confer with the Board before filing a Motion to Amend. 37 C.F.R. § 42.121(a). Patent Owner should contact the Board to request a conference in sufficient time to ensure that the conference is conducted at least two weeks before DUE DATE 1. Patent Owner and Petitioner are directed to the rules governing Motions to Amend, with particular regard to applicable page limits. 37 C.F.R. §§ 42.24(a)(1), 42.24(b)(3), 42.24(c)(3), 42.121(b).

4. *Confidential Information*

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.

A protective order does not take effect until a protective order is filed in the case and approved by the Board. If a motion to seal is filed by either party, the proposed protective order should be presented as an exhibit to the motion. The parties are urged to operate under the Board's default protective order. *See* Default Protective Order, Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, App. B (Aug. 14, 2012). If the parties propose a protective order deviating from the default protective order, they should submit the proposed order jointly. A marked-up comparison of the proposed and default protective orders should be presented as an additional exhibit to the motion to seal, so that differences are highlighted. The parties should contact the Board if they cannot agree on the terms of the proposed protective order.

a. Redactions

Redactions should be limited strictly to isolated passages consisting of confidential information. The thrust of the underlying argument or evidence must be discernable from the redacted version.

b. Confidential Information in Final Written Decision

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* Office Patent Trial Practices Guide, 77 Fed. Reg. at 48, 761.

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.

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 (see section B, below).

The parties are reminded that the Testimony Guidelines appended to the Office Trial Practice Guide, 77 Fed. Reg. at 48,772 (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.

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 owner is cautioned that any arguments for patentability not raised in the response will be deemed waived.

2. *DUE DATE 2*

The petitioner must file any reply to the patent owner's response and opposition to the motion to amend by DUE DATE 2.

3. *DUE DATE 3*

The patent owner must file any reply to the petitioner's opposition to patent owner's motion to amend by DUE DATE 3.

4. *DUE DATE 4*

a. Each party must file any motion for an observation on the cross-examination testimony of a witness (see section C, below) by DUE DATE 4.

b. Each party must file any motion to exclude evidence (37 C.F.R. § 42.64(c)) and any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 4.

5. *DUE DATE 5*

a. Each party must file any reply to an observation on cross-examination testimony by DUE DATE 5.

b. Each party must file any opposition to a motion to exclude evidence by DUE DATE 5.

6. *DUE DATE 6*

Each party must file any reply for a motion to exclude evidence by DUE DATE 6.

7. *DUE DATE 7*

The oral argument (if requested by either party) is set for DUE DATE 7.

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