

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

ANDREA ELECTRONICS CORP.,  
Patent Owner.

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Case IPR2017-00626  
Patent 6,363,345 B1

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Before MICHAEL R. ZECHER, JEREMY M. PLENZLER, and  
MIRIAM L. QUINN, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceeding—Remand Briefing Schedule  
*37 C.F.R. § 42.5(a)*

This case is before us on remand from the U.S. Court of Appeals for the Federal Circuit. *Apple Inc. v. Andrea Elecs. Corp.*, 949 F.3d 697 (Fed. Cir. 2020). On March 31, 2020, the panel held a conference call with counsel for Apple, Inc. (“Petitioner”) and Andrea Electronics Corp. (“Patent Owner”) to discuss the procedure and schedule on remand. A court reporter transcribed the call and a copy of the transcript will be included in the record when available.

As indicated in an email correspondence to the Board, and confirmed during the call, the parties agree that the procedure on remand should include no new evidence and no oral argument. Although the parties did not agree on whether briefing was necessary and the timing for any such briefing, if authorized, they agreed that any briefing allowed should be limited to addressing the arguments previously raised in the Petition, Patent Owner Response, Petitioner’s Reply, and Observations on Cross-Examination that pertain to the challenge which is subject to the remand from the Federal Circuit (i.e., whether the combination of Hirsch and Martin render claims 6–9 obvious).

Patent Owner requested a single round of concurrent briefing by the parties, limited to ten pages with a timeframe of two weeks. Petitioner submitted that no briefing is required, but requested two rounds of briefing, if briefing is authorized. Specifically, Petitioner proposed a first round of concurrent briefing, limited to ten pages with a timeline of three weeks, followed by a second round of concurrent briefing responsive to the first round, limited to five pages with a timeframe of three weeks.

We agree with Patent Owner that the requested briefing would be beneficial to this proceeding. During the call we authorized the briefing and

schedule proposed by Petitioner, with a starting date of April 1, 2020. Based on the discussion with the parties, and the issues presented on remand, we hereby set the following schedule (see DUE DATE APPENDIX) and instructions. The parties may not stipulate to different dates without Board authorization.

#### ORDER

1. DUE DATE 1: Petitioner and Patent Owner are each authorized to file an Opening Brief of no more than ten pages, limited to addressing the arguments previously raised in the Petition, Patent Owner Response, Petitioner's Reply, and Observations on Cross-Examination that pertain to the challenge which is subject to the remand from the Federal Circuit (i.e., whether the combination of Hirsch and Martin render claims 6–9 obvious).
2. DUE DATE 2: Petitioner and Patent Owner are each authorized to file a Response Brief of no more than five pages, limited to addressing the Opening Brief from the opposing party.
3. The Briefs shall not include any new evidence.
4. No oral argument will be held.

#### DUE DATE APPENDIX

DUE DATE 1	April 22, 2020
Opening Brief from Petitioner and Patent Owner	
DUE DATE 2	May 6, 2020
Response Brief from Petitioner and Patent Owner	

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