

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZTE (USA) INC. and ZTE Corporation,
Petitioner,

v.

PAPST LICENSING GMBH & CO. KG,
Patent Owner.

Case IPR2017-00714
Patent 6,470,399 B1

Before JONI Y. CHANG, JENNIFER S. BISK, and JAMES B. ARPIN,
Administrative Patent Judges.

CHANG, *Administrative Patent Judge.*

SCHEDULING ORDER

As an initial matter, no initial conference call is scheduled for the instant proceeding. The parties are directed to contact the Board within a month of this Order if there is a need to discuss proposed changes to this Scheduling Order or proposed motions. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012) (guidance in preparing for the initial conference call).

A. DUE DATES

This order sets due dates for the parties to take action after institution of the instant 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. Although parties may stipulate to a different DUE DATE 4 for filing observations and motions to exclude evidence, *parties may not stipulate to an extension for requesting an oral argument*. The parties also 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).

If requested, an oral hearing for the instant proceeding will be held on DUE DATE 7.

The parties are reminded that the Testimony Guidelines appended to the Office Patent 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 3¹

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 observation on the cross-examination testimony of a reply witness by DUE DATE 4 (*see* Section C, below).

¹ Please be advised that, if no Motion to Amend is filed in this proceeding, Due Date 3 is moot, and the panel may advance Due Dates 4–7 *sua sponte*.

b. Each party must file any motion to exclude evidence (37 C.F.R. § 42.64(c)) by DUE DATE 4 (*see* Section D, below).

c. Each party must file any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 4 (*see* above).

5. DUE DATE 5

a. Each party must file any response to an observation on cross-examination testimony by DUE DATE 5 (*see* Section C, below).

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.

B. CROSS-EXAMINATION

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

1. Cross-examination begins after any supplemental evidence is due. 37 C.F.R. § 42.53(d)(2).

2. 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. *Id.*

C. OBSERVATION ON CROSS-EXAMINATION

An 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* Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,767–68. 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.

D. MOTION TO EXCLUDE EVIDENCE

A motion to exclude evidence should not include arguments alleging that a reply exceeds the scope of a proper reply. Parties are advised that the Panel will not authorize motions to exclude replies (or portions thereof) alleged to contain arguments that are outside the scope of a proper reply under 37 C.F.R. § 42.23(b). The Panel will determine whether a party's reply is outside the scope of a proper reply when the Panel reviews all of the parties' briefs and prepares a final written decision.

E. MOTION TO AMEND

Although the filing of a Motion to Amend is authorized under the trial Rules, Patent Owner must confer with the Board, preferably no less than ten business days prior to DUE DATE 1, before filing any Motion to Amend.

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