

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

ALEX IS THE BEST, LLC,
Patent Owner.

Case IPR2017-02055 (Patent 8,947,542 B2)
Case IPR2017-02056 (Patent 8,134,600 B2)
Case IPR2017-02059 (Patent 8,581,991 B2)¹

Before DANIEL N. FISHMAN, MINN CHUNG, and
JESSICA C. KAISER, *Administrative Patent Judges*.

FISHMAN, *Administrative Patent Judge*.

SCHEDULING ORDER

¹ This Order applies to each referenced case. The parties are not authorized to use this heading style.

IPR2017-02055 (Patent 8,947,542 B2)
IPR2017-02056 (Patent 8,134,600 B2)
IPR2017-02059 (Patent 8,581,991 B2)

A. DUE DATES

This order sets due dates for the parties to take action after institution of the proceedings. The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6), with the exception that the parties may not change DUE DATE 4 with respect to the requirement for requesting oral argument without express authorization from the panel. 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 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.

1. INITIAL CONFERENCE CALL

Either party may request an initial conference call within 30 days of this Scheduling Order. To request a conference call, the requesting party should submit a list of dates and times when the parties are available for a

IPR2017-02055 (Patent 8,947,542 B2)
IPR2017-02056 (Patent 8,134,600 B2)
IPR2017-02059 (Patent 8,581,991 B2)

call. If an initial conference call is requested, the parties should be prepared to discuss any proposed changes to this Scheduling Order and any motions the parties anticipate filing during the trial. The parties are directed to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012) for guidance in preparing for an initial conference call.

2. 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 not raised in the response will be deemed waived.

3. 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.

4. 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.

5. DUE DATE 4

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

IPR2017-02055 (Patent 8,947,542 B2)

IPR2017-02056 (Patent 8,134,600 B2)

IPR2017-02059 (Patent 8,581,991 B2)

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.

6. DUE DATE 5

a. Each party must file any response 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.

7. DUE DATE 6

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

8. 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.*

IPR2017-02055 (Patent 8,947,542 B2)

IPR2017-02056 (Patent 8,134,600 B2)

IPR2017-02059 (Patent 8,581,991 B2)

C. MOTION FOR OBSERVATION ON CROSS-EXAMINATION

A motion for 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. 48,756, 48,768 (Aug. 14, 2012).* 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 AMEND

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. If Patent Owner elects to file a Motion to Amend, we strongly encourage the parties to arrange for a conference call with us no less than ten business days prior to DUE DATE 1.

E. CONFIDENTIAL INFORMATION

1. The parties must file confidential information using the appropriate availability indicator in PTABE2E (e.g., "Board and Parties Only"), regardless of whose confidential information it is. A party filing a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. *See 37 C.F.R. § 42.14.* However, the party that asserts that the document or thing is confidential

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.