

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NFL ENTERPRISES LLC,  
Petitioner,

v.

OPENTV, INC.,  
Patent Owner.

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Case IPR2017-02092  
Patent 6,233,736 B1

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Before JAMESON LEE, SALLY C. MEDLEY, and  
MICHAEL R. ZECHER, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

SCHEDULING ORDER

## A. GENERAL INSTRUCTIONS

### 1. *Initial Conference Call*

Unless at least one of the parties requests otherwise, we will not conduct an initial conference call as described in the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012). The parties are directed to contact the Board within 30 days of this Scheduling Order if there is a need to discuss proposed changes to the schedule or any proposed motions. *See* 77 Fed. Reg. at 48,765–66.

### 2. *Conference Calls with the Board*

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

### 3. *Confidential Information*

The parties must file confidential information using the appropriate availability indicator in PTAB E2E (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, unless the party whose confidential information is at issue is not a party to this proceeding.

A protective order does not exist in a case until one is filed in the case and is 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, should that become necessary. *See* Default Protective Order, Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,769–71 (Appendix B). If the parties choose to propose a protective order deviating from the default protective order, they should submit the proposed protective 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 the difference can be understood readily. The parties should contact the Board if they cannot agree on the terms of the proposed protective order.

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

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 Practice Guide, 77 Fed. Reg. at 48,761.

#### *4. Motion to Amend*

Because the involved patent is expired, there is no occasion for Patent Owner to file a Motion to Amend.

#### *5. Depositions*

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.

#### 6. *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.*

#### 7. *Observations on Cross-Examination*

Observations on cross-examination provide 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 48,768. No new evidence of any kind may be introduced with an observation. 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.

## 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.

If the parties stipulate to different due dates, notice of the stipulation specifically identifying the changed due dates must be filed promptly. 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).

### 1. DUE DATE 1<sup>1</sup>

The patent owner may file—

- a. A response to the petition (37 C.F.R. § 42.120).

The patent owner must file any such response 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.

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<sup>1</sup> Because the involved patent is expired, there is no occasion for Patent Owner to file a Motion to Amend.

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