

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,
Petitioner,

v.

UNILOC LUXEMBOURG, S.A.,
Patent Owner.

Cases IPR2018-00394, IPR2018-00395
Patent 6,622,018 B1

Before MIRIAM L. QUINN, CHARLES J. BOUDREAU, and
GARTH D. BAER *Administrative Patent Judges.*

BAER, *Administrative Patent Judge.*

SCHEDULING ORDER
37 C.F.R. § 42.5

A. GENERAL INSTRUCTIONS

1. INITIAL CONFERENCE CALL

Unless a party 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 must request an initial conference call if either party is aware of any conflicts or concerns with due dates 6 or 7 set forth in the Appendix of this Scheduling Order. In lieu of such a call, we instruct the parties as follows:

- (a) If a party wishes to request an initial conference call, that party shall request the call no later than 25 days after the institution of trial;
- (b) A request for a conference call shall include: (a) a list of proposed motions, if any, to be discussed during the call and (b) a list of dates and times when the parties are available for the call; and
- (c) The parties shall be prepared to discuss during the initial conference call their concerns, if any, relating to the schedule in this proceeding as set forth below.

Absent good cause shown, we will not conduct an initial conference call later than 25 days after the institution of a trial.

2. PROTECTIVE ORDER

A protective order does not exist in this proceeding unless the parties file one and the Board approves it. If either party files a motion to seal before entry of a protective order, a jointly proposed protective order should be presented as an exhibit to the motion. We encourage the parties to adopt the Board's default protective order if they conclude that a protective order

is necessary. *See* Default Protective Order, Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, App. B (Aug. 14, 2012). If the parties choose to propose a protective order deviating from the default protective order, they must submit the proposed protective order jointly along with a marked-up comparison of the proposed and default protective orders showing the differences.

The Board has a strong interest in the public availability of the proceedings. We advise the parties that redactions to documents filed in this proceeding should be limited strictly to isolated passages consisting entirely of confidential information, and that the thrust of the underlying argument or evidence must be clearly discernible from the redacted versions. We also advise the parties that information subject to a protective order will become public if identified in a final written decision in this proceeding, and that 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.

3. MOTION TO AMEND

Patent Owner may file a motion to amend without prior authorization from the Board. Nevertheless, Patent Owner must confer with the Board before filing such a motion. *See* 37 C.F.R. § 42.121(a). If Patent Owner intends to file a motion to amend, Patent Owner should arrange for a conference call with the panel and opposing counsel at least one week before DUE DATE 1 in order to satisfy the conferral requirement.

4. CONFERENCE CALLS

Prior to requesting a conference call, the parties shall attempt in good faith to resolve the issue. The email requesting a conference shall certify that such an effort was made.

The panel encourages parties to resolve disputes relating to discovery on their own and in accordance with the precepts set forth in 37 C.F.R. § 42.1(b). To the extent that a dispute arises between the parties relating to discovery, the parties shall meet and confer to resolve such a dispute before contacting the Board. If attempts to resolve the dispute fail, a party may request a conference call with the Board and the other party in order to seek authorization to move for relief. In any request for a conference call with the Board to resolve a discovery dispute, the requesting party shall:

- (a) certify that it has conferred with the other party in a good-faith 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.

The panel will not record conference calls or arrange for court reporters to be on such calls. If either party desires a transcript of a call, that party may provide a court reporter for the call without permission of the other party or the panel. In that case, the party must be sure to inform the other parties and the panel of the court reporter's presence, either in advance of the call or at the very beginning of the call. In addition, during the

conference call, that party should seek authorization to file the transcript (without any modification), as an exhibit.

5. DEPOSITIONS

The parties are advised that the Testimony Guidelines appended to the Office Patent Trial Practice Guide apply to this proceeding. *See* 77 Fed. Reg. 48,756, 48,772 (Appendix D) (Aug. 14, 2012), <http://go.usa.gov/x9ARh>. 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.

Whenever a party submits a deposition transcript as an exhibit in this proceeding, the submitting party shall file the full transcript of the deposition rather than excerpts of only those portions being cited. After a deposition transcript has been submitted as an exhibit, all parties who subsequently cite to portions of the transcript shall cite to the first-filed exhibit rather than submitting another copy of the same transcript.

6. MOTION TO EXCLUDE

The parties shall not use a Motion to Exclude for any purpose other than to raise admissibility issues under the Federal Rules of Evidence. *See* 37 C.F.R. §§ 42.61–64. If an issue arises with regard to a paper being out of proper scope under 37 C.F.R. § 42.23(a), the parties shall contact the Board in a timely manner to raise the matter. *See, e.g.*, IPR2014-00148, Paper 42.

7. SUPPLEMENTAL EVIDENCE AND SUPPLEMENTAL INFORMATION

It is important to distinguish supplemental evidence (*see* 37 C.F.R. § 42.64(b)(2)) from supplemental information (*see* 37 C.F.R. § 42.123). The

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