

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NFL ENTERPRISES LLC,
Petitioner,

v.

OPENTV, INC.,
Patent Owner.

Case IPR2018-00463
Patent 7,055,169 B2

Before JAMESON LEE, SALLY C. MEDLEY, and
CHRISTOPHER L. OGDEN, *Administrative Patent Judges*.

OGDEN, *Administrative Patent Judge*.

SCHEDULING ORDER

A. GENERAL INSTRUCTIONS

1. INITIAL CONFERENCE CALL

The parties are directed to contact the Board within 15 business days of the date of this Order if there is a need to discuss (a) proposed changes to this Scheduling Order (i.e., regarding DUE DATES 6 and 7); or (b) any proposed motions, *not* already authorized by our Rules or by this Scheduling Order, which the parties anticipate filing during the trial. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012) (setting forth guidance in preparing for the initial conference call). To request a conference call, the requesting party should submit a list of dates and times when *both* parties are available for a call.

2. 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 this proceeding unless the parties file one and the Board approves it. If either party files a motion to seal, the party should present a jointly proposed protective order as an exhibit to the motion. The motion to seal must include a certification that the moving party has in good faith conferred or attempted to confer with other affected parties in an effort to resolve any dispute. *See* 37 C.F.R. 42.54(a).

If a protective order is necessary, we encourage the parties to adopt the Board’s default protective order. *See* Default Protective Order, Office Patent

Trial Practice Guide, 77 Fed. Reg. at 48,771, App. B. 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. Redactions to documents filed in this proceeding should be limited strictly to isolated passages consisting entirely of confidential information, and the thrust of the underlying argument or evidence must be clearly discernible from the redacted versions. Information subject to a protective order will become public if identified in a final written decision in this proceeding, and 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. MOTIONS TO AMEND

Patent Owner may file one motion to amend the patent, but only after conferring with the Board. 37 C.F.R. § 42.121(a). Patent Owner must arrange for a conference call with the panel and opposing counsel at least ten (10) business days prior to DUE DATE 1 in order to satisfy the conferral requirement. For information and guidance on motions to amend, see *Western Digital Corp. v. SPEX Techs., Inc.*, IPR2018-00082, 2018 WL 1989599 (PTAB Apr. 25, 2018) (informative).

4. MOTIONS TO EXCLUDE

A motion to exclude may only raise admissibility issues under the Federal Rules of Evidence, as applicable under 37 C.F.R. § 42.62. A party may not use the motion as additional briefing on any other topic, subject, or issue, for

example, any assertion that a certain brief or evidentiary submission exceeds the proper scope for such brief or submission. In case of an issue based on exceeding the proper scope of a submission, the parties must raise the matter by initiating a conference call with the Board.

5. DISCOVERY DISPUTES

We encourage 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 must 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 must (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.

6. DEPOSITIONS

The Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,772, App. 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.

Whenever a party submits a deposition transcript as an exhibit in this proceeding, the submitting party must 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.

7. 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.*

8. 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. 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.

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