

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SONOS, INC.,  
Petitioner,

v.

IMPLICIT, LLC,  
Patent Owner.

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IPR2018-00766 (Patent 7,391,791 B2)<sup>1</sup>  
IPR2018-00767 (Patent 8,942,252 B2)

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Before MICHELLE N. WORMMEESTER, SHEILA F. McSHANE, and  
NABEEL U. KHAN, *Administrative Patent Judges*.

McSHANE, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceeding  
*37 C.F.R. §§ 42.5, 42.123(b)*

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<sup>1</sup> This Order addresses issues that are identical in each of these cases. Therefore, we exercise our discretion to issue one order to be filed in each case. The parties, however, are not authorized to use this style heading in any subsequent papers without prior authorization.

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IPR2018-00767 (Patent 8,942,252 B2)

## BACKGROUND

On March 15, 2019, the Board received an email from Patent Owner requesting authorization to file a motion to file supplemental information. The Board conducted a conference call with the parties on March 21, 2019.

Patent Owner asserts that its proposed motion should be permitted because it will show that the supplemental information could not have been obtained earlier and consideration of this information would be in the interest of justice under 37 C.F.R. § 42.123(b). Patent Owner contends that it could not have reasonably earlier sought the documents, it only recently became aware of the documents, and the documents are directly relevant to disputed issues in the cases. In addition to the proposed motion, Patent Owner seeks to submit evidentiary information, including a declaration, in support of the motion. Patent Owner stated that it would offer the deposition of the declarant.

Petitioner opposes any motion to submit the supplemental information because it believes that Patent Owner cannot make the requisite showing under 37 C.F.R. § 42.123(b), the supplemental information will not be admissible, and the motion is likely to entail further discovery and is coming late in the proceedings.

We grant leave for filing a motion to submit supplemental information under 37 C.F.R. § 42.123(b).

## ORDER

It is, therefore,

ORDERED that Patent Owner is authorized to file a motion to submit supplemental information under 37 C.F.R. § 42.123(b) (the “Motion”);

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FURTHER ORDERED that the Motion, filed no later than ten days from the entry of this order, shall be no more than 8 pages, and supporting evidence, including any declaration, may be filed, however, any evidence submitted is limited to that directly related to alleged support for late submission under 37 C.F.R. § 42.123(b);

FURTHER ORDERED that the Motion shall have as attachment(s) the supplemental information for which submission is sought, but the supplemental information at issue shall not be filed as exhibits;

FURTHER ORDERED that if Patent Owner relies upon new testimonial evidence in a declaration, Petitioner may cross examine the declarant concerning that testimonial evidence within ten days after the filing of the Motion;

FURTHER ORDERED that Petitioner may file an opposition to the Motion (the “Opposition”), filed no later than twenty days after the filing of the Motion, and the Opposition shall be no more than 8 pages; and

FURTHER ORDERED that no reply brief may be filed.

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