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Paper No. 9
Entered: October 2, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Apple Inc.,
Petitioner,

v.

Uniloc 2017 LLC,
Patent Owner.

Case IPR2018-00884
Patent 8,539,552 B1

Before SALLY C. MEDLEY, KARL D. EASTHOM, and SEAN P. O'HANLON, *Administrative Patent Judges*.

O'HANLON, *Administrative Patent Judge*.

SCHEDULING ORDER

A. GENERAL INSTRUCTIONS

1. Initial Conference Call

The parties are directed to contact the Board within a month of this Order if there is a need to discuss proposed changes to this Scheduling Order or proposed motions that have not been authorized in this Order or other prior Order or Notice. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012) ("Practice Guide") (guidance in preparing for the initial conference call). A request for an initial conference call shall include a list of proposed motions, if any, to be discussed during the call.

2. Protective Order

No protective order shall apply to this proceeding until the Board enters one. If either party files a motion to seal before entry of a protective order, a jointly proposed protective order shall be filed as an exhibit with the motion. The Board encourages the parties to adopt the Board's default protective order if they conclude that a protective order is necessary. *See* Practice Guide, App'x B (Default Protective Order). 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 between the two and explain why good cause exists to deviate from the default protective order.

The Board has a strong interest in the public availability of trial proceedings. Redactions to documents filed in this proceeding should be limited to the minimum amount necessary to protect confidential information, and 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

may 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* Practice Guide 48,761.

3. Discovery Disputes

The Board encourages parties to resolve disputes relating to discovery on their own. 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.

4. Testimony

The parties are reminded that the Testimony Guidelines appended to the Trial Practice Guide, 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.

5. Cross-Examination

Except as the parties might otherwise agree, for each due date:

Cross-examination ordinarily takes place after any supplemental evidence is due. 37 C.F.R. § 42.53(d)(2).

Cross-examination ordinarily 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.*

6. Oral Argument

Requests for oral argument must comply with 37 C.F.R. § 42.70(a). To permit the Board sufficient time to schedule the oral argument, the parties may not stipulate to an extension of the request for oral argument beyond the date set forth in the Due Date Appendix. Unless the Board notifies the parties otherwise, oral argument, if requested, will be held at the USPTO headquarters in Alexandria.

The parties may request that the oral argument instead be held at a USPTO Regional Office. The parties should meet and confer, and jointly propose the parties' preference at the initial conference call, if requested. Alternatively, the parties may jointly file a paper stating their preference for the hearing location within one month of this Order. Note that the Board may not be able to honor the parties' preference of hearing location due to, among other things, the availability of hearing room resources and the needs of the panel. The Board will consider the location request and notify the parties accordingly if a request for change in location is granted.

Seating in the Board's hearing rooms may be limited, and will be available on a first-come, first-served basis. If either party anticipates that more than five (5) individuals will attend the argument on its behalf, the party should notify the Board as soon as possible, and no later than the request for oral argument. Parties should note that the earlier a request for accommodation is made, the more likely the Board will be able to accommodate additional individuals.

B. DUE DATES

This order sets due dates for the parties to take action after institution of the proceeding. The parties may stipulate different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). The parties may not stipulate to

an extension of DUE DATES 6 and 7, nor does stipulating to a different DUE DATE 4 modify the deadline, set in this Order, for requesting oral argument.

If the parties stipulate to different due dates, a notice of the stipulation, specifically identifying the changed due dates, must be promptly filed. In stipulating 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 (§ 42.64(b)(2)), to conduct cross-examination (§ 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony.

1. DUE DATE 1

Patent Owner may file—

a. A response to the petition (37 C.F.R. § 42.120). If Patent Owner elects not to file a response, Patent Owner must arrange a conference call with the parties and the Board. Patent Owner is cautioned that any arguments for patentability not raised in the response may be deemed waived.

b. A motion to amend the patent (37 C.F.R. § 42.121). 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. 37 C.F.R. § 42.121(a). To satisfy this requirement, Patent Owner should request a conference call with the Board no later than two weeks prior to DUE DATE 1. The parties are directed to the Board's Guidance on Motions to Amend in view of *Aqua Products* (https://go.usa.gov/xU6YV), and *Western Digital Corp. v. SPEX Techs., Inc.*, Case IPR2018-00082 (PTAB April 25, 2018) (Paper 13) (providing information and guidance on motions to amend).

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