

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHOPIFY, INC.,
Petitioner,

v.

DDR HOLDINGS, LLC,
Patent Owner.

IPR2018-01008 and IPR2018-01011 (Patent 9,639,876 B1)
IPR2018-01009 and IPR2018-01012 (Patent 9,043,228 B1)
IPR2010-01010 and IPR2018-01014 (Patent 8,515,825 B1)¹

Before CARL M. DEFRANCO, PATRICK M. BOUCHER, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

FINAMORE, *Administrative Patent Judge*.

SCHEDULING ORDER
37 C.F.R. § 42.5

¹ This Scheduling Order applies to each of these cases. We exercise our discretion to issue one Order to be docketed in each case. The parties are not authorized to use a multi-proceeding caption.

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A. GENERAL INSTRUCTIONS

1. *Request for an Initial Conference Call*

An initial conference call is not scheduled in this case. A party may request an initial conference call within twenty-five (25) days after the institution of trial if there is a need to discuss proposed changes to this 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) (available at <https://go.usa.gov/xU7GK>) (“Practice Guide”) (guidance in preparing for the initial conference call).

A party requesting an initial conference call shall: (a) identify the requested relief, e.g., proposed changes to the schedule, proposed motions; and (b) propose two or more dates and times when both parties are available for the call. When an initial conference call is scheduled in response to a request, the parties should be prepared to discuss any concerns relating to the schedule in this proceeding.

2. *Protective Order*

No protective order shall apply to this proceeding unless the parties file one and the Board approves it. 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, 77 Fed. Reg. at 48,771 (App. B) (the “Default Protective Order”). If the parties choose to propose a protective order deviating from the Default Protective Order, they must explain why good cause exists to deviate from the Default Protective Order and must file as exhibits the proposed protective order and a marked-up comparison

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showing the differences between the proposed protective order and the Default Protective Order.

If either party files a motion to seal before entry of a protective order, the motion to seal should include as an exhibit a proposed protective order that has been discussed with the opposing party and, preferably, be jointly proposed. If the protective order is not jointly proposed, the proponent of the order should identify where the parties differ in the proposed language of the 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*, 77 Fed. Reg. at 48,761.

3. Resolution of Disputes

The Board encourages parties to resolve disputes, including disputes relating to discovery, on their own and in accordance with the precepts of securing a just, speedy, and inexpensive resolution, as set forth in 37 C.F.R. § 42.1(b). To the extent that a dispute arises between the parties, 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

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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 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 any issue for which agreement has not been reached; (c) identify the precise relief to be sought; and (d) propose two or more specific dates and times at which both parties are available for the conference call.

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.

Whenever a party submits a deposition transcript as an exhibit, 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, any party who subsequently cites to portions of the transcript shall cite to the filed exhibit rather than submitting another copy of the same transcript.

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).

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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, Virginia. The parties may request that the oral argument instead be held at the Rocky Mountain Regional Office in Denver, Colorado. 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

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