

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

QUALCOMM INC.,  
Patent Owner.

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Case IPR2018-01279  
Patent 7,844,037 B2

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Before DANIEL N. FISHMAN, MICHELLE N. WORMMEESTER, and  
SCOTT B. HOWARD, *Administrative Patent Judges*.

HOWARD, *Administrative Patent Judge*.

ORDER  
Modifying Scheduling Order  
37 C.F.R. § 42.5

In an e-mail dated September 27, 2019, Petitioner requested to postpone the oral hearing due to a family emergency involving Petitioner's expert. Exhibit 3002. Specifically, Petitioner states that

last week the wife of Petitioner's expert, Dr. Narayan Mandayam, was involved in a serious car accident (described in this article). She sustained severe injuries in the accident necessitating multiple surgeries. Dr. Mandayam indicates that his wife is slowly recovering, but that he will be required to focus all of his time and energy over the next several weeks caring for her. Thus, he is unavailable, until at least the last week of October.

*Id.* According to Petitioner, because of Dr. Mandayam's unavailability "Patent Owner was unable to depose Dr. Mandayam on [September 25] as scheduled." *Id.* Petitioner further notes that "Patent Owner's Surreply and Reply in Support of the Motion to Amend are currently due on [October 2], but obviously Patent Owner cannot prepare these filings without deposing Petitioner's expert on his supplemental declaration filed in support of Petitioner's Reply and Opposition to the Motion to Amend." *Id.* Petitioner requests a postponement and modification of the schedule to "compensate for Dr. Mandayam's unforeseen period of unavailability, or, alternatively, to allow Petitioner to engage a new expert to step in for Dr. Mandayam and adopt his supplemental declaration." *Id.* According to the e-mail, Patent Owner did not object to the postponement. *Id.*

On October 2, 2019, a call was held between representatives of the parties and Administrative Patent Judges Fishman, Wormmeester, and Howard. During the call, counsel for Petitioner indicated that they would need a one-month extension so that (1) Dr. Mandayam would be ready for his deposition or (2) to allow Petitioner to obtain a new expert and prepare

for a deposition. Counsel for both parties also stated that they did not plan on filing any motions to exclude evidence at this time and that they understood that the modification of the scheduling order may result in the need for a good cause extension pursuant to 35 U.S.C. § 316(a)(11) and 37 C.F.R. § 42.100(c). Additionally, Patent Owner indicated that if Petitioner used a substitute expert witness who adopted Dr. Mandayam's testimony, Patent Owner would not object to the testimony as not being the substitute expert's opinion.

In view of (1) the injuries to Dr. Mandayam's wife and his need to focus his time and energy on her recovery and (2) the current due dates for the remaining briefs, good cause exists for modifying the schedule by approximately one month. Petitioner can either wait for Dr. Mandayam to be available for his deposition or arrange for a substitute expert who will adopt Dr. Mandayam's testimony. However, absent extraordinary circumstances, no further extensions of the oral hearing date will be considered based on the availability of Petitioner's expert.

Furthermore, based on the representations of the parties, the scheduling order will not include dates for the filing of a motion to exclude. If either party wants to file a motion to exclude evidence submitted after today, the party shall promptly request via e-mail authorization to file a motion to exclude.

In consideration of the foregoing, it is hereby:

ORDERED that Due Date #3 is rescheduled from October 2, 2019 to October 30, 2019;

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FURTHER ORDERED that Due Date #4 (regarding Petitioner's sur-reply to Patent Owner's reply to the opposition to the motion to amend) is rescheduled from October 14, 2019 to November 12, 2019;

FURTHER ORDERED that Due Date #4 (regarding the request for oral argument) is rescheduled from October 2, 2019 to October 30, 2019;

FURTHER ORDERED that Due Date #6 (regarding the date a party may request that the Board hold a pre-hearing conference) is rescheduled from October 16, 2019 to November 13, 2019;

FURTHER ORDERED that Due Date #7 is rescheduled from October 30, 2019 to November 20, 2019;

FURTHER ORDERED that Due Dates #4 and #7 may not be modified by stipulation; and

FURTHER ORDERED that if the parties have a conflict with Due Date #7, the parties shall notify the Board by a joint e-mail addressed to [Trials@uspto.gov](mailto:Trials@uspto.gov) within three business days of the issuance of this Order and identify alternative dates during the week of November 18, 2019 and December 2, 2019.

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