

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

FIRSTFACE CO., LTD.,
Patent Owner.

Case IPR2019-00613
Patent 9,633,373 B2¹

Before JUSTIN T. ARBES, MELISSA A. HAAPALA, and
RUSSELL E. CASS, *Administrative Patent Judges*.

HAAPALA, *Administrative Patent Judge*.

SCHEDULING ORDER

¹ Case IPR2019-01011 has been consolidated with this proceeding.

A. GENERAL INSTRUCTIONS

1. Initial Conference Call²

The parties are directed to contact the Board within one week 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. 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.

3. 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

² The page/word limits for papers in this proceeding are set forth in 37 C.F.R. § 42.24 (e.g., 14,000 words for Patent Owner’s response, 5,600 words for Petitioner’s reply). Given the consolidation of the two proceedings, however, if either party believes additional pages/words are warranted, the parties shall confer with each other and request an initial conference call.

attorneys' fees incurred by any party may be levied on a person who impedes, delays, or frustrates the fair examination of a witness.

4. 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.*

5. Motion to Amend

Pursuant to a Joint Stipulation by the parties, Patent Owner “agreed to waive its right to file a motion to amend” in IPR2019-00613 and IPR2019-01011. Paper 12, 4. Thus, no due dates are specified with a respect to a motion to amend.

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.

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 3, 5, and 6 (earlier or later, but no later than DUE DATE 7). A notice of the stipulation, specifically identifying the changed due dates, must be promptly filed. The parties may not stipulate an extension of DUE DATES 4, 7, and 8.

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.

On September 17, 2019, Petitioner and Patent Owner filed a Joint Stipulation agreeing to extend by four weeks Due Dates 1–3 in the Scheduling Order for IPR2019-00613 entered on August 6, 2019.³ Paper 12. Accordingly, Due Dates 1–3 below have been modified to reflect the extension agreed to by the parties.

1. DUE DATE 1

Patent Owner may file 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

³ The parties further agreed that if IPR2019-01011 is instituted, it should be consolidated and aligned with the schedule entered in IPR2019-00613.

Paper 12, 3.

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.

2. DUE DATE 2

Petitioner may file a reply to the Patent Owner's response.

3. DUE DATE 3

Patent Owner may file a sur-reply to Petitioner's reply.

4. DUE DATE 4

Either party may file a request for oral argument (may not be extended by stipulation).

5. DUE DATE 5

Either party may file a motion to exclude evidence (37 C.F.R. § 42.64(c)).

6. DUE DATE 6

Either party may file an opposition to a motion to exclude evidence.

Either party may request that the Board hold a pre-hearing conference.

7. DUE DATE 7

Either party may file a reply to an opposition to a motion to exclude evidence.

8. DUE DATE 8

The oral argument (if requested by either party) shall be held on this date. Approximately one month prior to the argument, the Board will issue an order setting the start time of the hearing and the procedures that will govern the parties' arguments.

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