Trials@uspto.gov
571-272-7822

Paper 15
Date: November 19, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TCL INDUSTRIES HOLDINGS CO., LTD. and HISENSE CO., LTD.,
Petitioner,

v.

PARKERVISION, INC.,
Patent Owner.

IPR2021-00985
Patent 7,292,835 B2

Before MICHAEL R. ZECHER, BART A. GERSTENBLITH, and IFTIKHAR AHMED, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

SCHEDULING ORDER

I. GENERAL INSTRUCTIONS

A. Initial and Additional Conference Calls

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* Consolidated Trial Practice Guide ("Consolidated Practice Guide")[1] at 9–10, 65 (guidance in preparing for a conference call); *see also* 84 Fed. Reg. 64,280 (Nov. 21, 2019). A request for an initial conference call shall include a list of proposed motions, if any, to be discussed during the call.

The parties may request additional conference calls as needed. Any email requesting a conference call with the Board should: (a) copy all parties, (b) indicate generally the relief being requested or the subject matter of the conference call, (c) include multiple times when all parties are available, (d) state whether the opposing party opposes any relief requested, and (e) if opposed, either certify that the parties have met and conferred telephonically or in person to attempt to reach agreement, or explain why such meet and confer did not occur. The email may not contain substantive argument and, unless otherwise authorized, may not include attachments. *See* Consolidated Practice Guide at 9–10.

B. 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

[1] *Available at* https://www.uspto.gov/TrialPracticeGuideConsolidated.

motion. It is the responsibility of the party whose confidential information is at issue, not necessarily the proffering party, to file the motion to seal.[2] The Board encourages the parties to adopt the Board's default protective order if they conclude that a protective order is necessary. *See* Consolidated Practice Guide at 107–22 (App. B, Protective Order Guidelines and 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* Consolidated Practice Guide at 21–22.

C. 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

[2] If the entity whose confidential information is at issue is not a party to the proceeding, please contact the Board.

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.

In any request for a conference call with the Board to resolve a discovery dispute, the requesting party shall: (a) certify that it has conferred with the other party in a good faith effort to resolve the dispute; (b) identify with specificity the issues for which agreement has not been reached; (c) identify the precise relief to be sought; and (d) propose specific dates and times at which both parties are available for the conference call.

D. Testimony

The parties are reminded that the Testimony Guidelines appended to the Consolidated Practice Guide at 127–30 (App. D, Testimony Guidelines) 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.

E. 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.*

F. Motion to Amend

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. *See* Section II below regarding DUE DATES.

Patent Owner has the option to receive preliminary guidance from the Board on its motion to amend. *See* Notice Regarding a New Pilot Program Concerning Motion to Amend Practice and Procedures in Trial Proceedings under the America Invents Act before the Patent Trial and Appeal Board, 84 Fed. Reg. 9,497 (Mar. 15, 2019) ("MTA Pilot Program Notice"); *see also* Consolidated Practice Guide at 67. If Patent Owner elects to request preliminary guidance from the Board on its motion, it must do so in its motion to amend filed on DUE DATE 1.

Any motion to amend and briefing related to such a motion shall generally follow the practices and procedures described in MTA Pilot Program Notice unless otherwise ordered by the Board in this proceeding. The parties are further directed to the Board's Guidance on Motions to Amend in view of *Aqua Products v. Matal*, 872 F.3d 1290 (Fed. Cir. 2017) (https://go.usa.gov/xU6YV), and *Lectrosonics, Inc. v. Zaxcom, Inc.*, IPR2018-01129, Paper 15 and IPR2018-01130, Paper 14 (PTAB Feb. 25, 2019) (precedential).

At DUE DATE 3, Patent Owner has the option to file a reply to the opposition to the motion to amend and preliminary guidance, or a revised motion to amend. *See* MTA Pilot Program Notice at 9,500–01. Patent

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