

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.

MEMORYWEB, LLC,  
Patent Owner.

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IPR2022-00031  
Patent 10,621,228 B2

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Before LYNNE H. BROWNE, NORMAN H. BEAMER, and  
KEVIN C. TROCK, *Administrative Patent Judges*.

TROCK, *Administrative Patent Judge*.

REVISED SCHEDULING ORDER  
Conduct of the Proceeding  
*37 C.F.R. § 42.5*

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On May 30, 2023, the Board issued an Order (Paper 43) directing the parties to confer and submit a proposed joint briefing schedule and discovery plan to address the real party in interest, estoppel, and waiver issues in this proceeding. The parties submitted their joint proposal to the Board by email on June 9, 2023. Ex. 3005.

On June 15, 2023, the Board entered an Order (Paper 45) setting a briefing schedule for the parties to file briefs addressing the topics set forth in Exhibit 3005, First Phase.

On August 11, 2023, the Board issued an Order (Paper 50) granting Patent Owner's request for discovery on the RPI issue and set a schedule for the parties to conduct discovery and files briefs on the RPI, estoppel and waiver issues.

On August 18, 2023, the Board received an email from counsel (Exhibit 3006) jointly requesting modifications to the discovery and briefing schedule. The parties' joint request is GRANTED, and the revised schedule is set out below.

**(1) by August 21, 2023 (Due Date 3)**, MemoryWeb will file as exhibits in this proceeding the non-confidential exhibits filed in the *Unified* proceeding (IPR2021-01413) relevant to the RPI issue. Apple will produce to MemoryWeb responsive non-privileged documents as follows: (i) all communications with Unified Patents relating to MemoryWeb, the '228 patent, the *Unified* proceeding, or this IPR (IPR2022-00031); and (ii) all agreements or contracts between Apple and Unified Patents, including Apple's membership agreement and any amendments or add-ons. Apple may provide a declaration from a witness familiar with the documents it is producing. MemoryWeb is allowed a 4-hour deposition of that witness.

If a deposition of a Unified Patents' witness is conducted, Apple shall be entitled to participate and examine the witness after MemoryWeb has completed its examination.

The parties will negotiate with Unified Patents in good faith regarding the production of documents, deposition scheduling and scope.

Any deposition of a witness shall be conducted on a date acceptable to the parties and the witness, notwithstanding Due Date 3.

**(2) by September 7, 2023 (Due Date 4)**, MemoryWeb may file a Motion to Terminate ("Motion") of up to 7000 words. MemoryWeb's Motion may address at least: (1) estoppel under 35 U.S.C. § 315(e)(1) as to claims 1–7, including addressing Apple's RPI status in the *Unified* proceeding, and (2) discretionary estoppel

based on at least 35 U.S.C. § 315(d), 37 CFR § 42.72, and 37 CFR § 42.5 as to claims 8–19.

**(3) by September 21, 2023 (Due Date 5)**, Apple may file a response to MemoryWeb’s Motion of up to 7,000 words.

If Apple submits a declaration after Due Date 4, Apple will make the declarant available for a deposition within 7 days of Due Date 5. MemoryWeb may file a Motion for Observations on the cross examination of the witness (not to exceed 1,000 words) within 7 days of the deposition.

**(4) by October 5, 2023 (Due Date 6)**, MemoryWeb may file a reply to Apple’s response brief not to exceed 3,500 words. Each party may also file a Motion to Exclude.

**(5) by October 11, 2023 (Due Date 7)**, each party may file an opposition to the other party’s Motion to Exclude (if any).

**(6) an Oral Hearing** on the subject matter addressed by the parties’ briefing and any attendant motions shall be held by video-conference on **October 18, 2023 (Due Date 8), at 1:00 pm Eastern time**. Each party shall have 1 hour (60 minutes) to address the relevant issues and may reserve an appropriate amount of time for rebuttal.

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