

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PACIFIC MARKET INTERNATIONAL, LLC,
Petitioner,

v.

IGNITE USA, LLC,
Patent Owner.

Case IPR2014-00561
Patent 7,997,442 B2

Before JOSIAH C. COCKS, MITCHELL G. WEATHERLY, and
GEORGE R. HOSKINS, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

INITIAL CONFERENCE SUMMARY AND ORDER

Conduct of the Proceeding
37 C.F.R. § 42.5

1. Introduction

On October 30, 2014, an initial conference call was conducted between respective counsel for the parties and Judges Cocks, Weatherly, and Hoskins. The purpose of the call was to determine if the parties have any issues concerning the Scheduling Order (Paper 10), and to discuss any motions contemplated by the parties.

2. Scheduling Order

Neither party indicated any issues with the Scheduling Order. The parties are reminded that, without obtaining prior authorization from the Board, they may stipulate to different dates for DATES 1–5¹ by filing an appropriate notice with the Board.

3. Protective Order

The parties have not discussed a protective order at this time. No protective order has been entered. Should circumstances change, the parties are reminded of the requirement for a protective order when filing a Motion to Seal. 37 C.F.R. § 42.54. If the parties have agreed to a proposed protective order, including the Standing Default Protective Order, 77 Fed. Reg. 48,756, App. B (Aug 14, 2012), they should file a signed copy of the proposed protective order with the motion to seal. If the parties choose to propose a protective order other than or departing from the default Standing Protective Order, they must submit a joint, proposed protective order, accompanied by a red-lined version based on the default protective order in Appendix B to the Board’s Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,769 (August 14, 2012) (“the Trial Practice Guide”).

¹ The parties may not stipulate to changes for any other DUE DATE.

4. Discovery

The parties are reminded of the discovery provisions of 37 C.F.R. §§ 42.51–52 and Trial Practice Guide, at 48,761–62. Discovery requests and objections are not to be filed with the Board without prior authorization. The parties may request a conference with the Board if the parties are unable to resolve discovery issues between them. A motion to exclude, which does not require Board authorization, must be filed to preserve any objection. *See* 37 C.F.R. § 37.64, Trial Practice Guide at 48,767. There are no discovery issues pending at this time.

Each party may depose experts and affiants supporting the opposing party. The parties are reminded of the provisions for taking testimony found at 37 C.F.R. § 42.53 and the Trial Practice Guide at 48,772, App. D.

5. Motions

The parties are reminded that, except as otherwise provided in the Rules, Board authorization is required before filing a motion. 37 C.F.R. § 42.20(b). A party seeking to file a motion should request a conference to obtain authorization to file the motion. Both parties filed lists of proposed motions. Papers 14, 15.

Patent Owner's list indicates that a motion to withdraw and substitute lead and back-up counsel was filed on October 24, 2014. Paper 14, 1. That motion was granted. *See* Paper 16. Patent Owner's list also indicates that Patent Owner does not anticipate filing any additional motions in the proceeding for which prior authorization would be required, including any motion to amend claims. Paper 14, 1.

Petitioner's list includes a request seeking authorization to file a motion to submit supplemental information, in particular, a supplemental

declaration of Petitioner's witness Aron D. Dahlgren. Paper 15, 2. Patent Owner indicated during the call that it does not believe that such a motion should be authorized, and that it would oppose the motion if authorized.

Title 37 C.F.R. § 42.123 states, in part, the following:

§ 42.123 Filing of supplemental information.

(a) *Motion to submit supplemental information.* Once a trial has been instituted, a party may file a motion to submit supplemental information in accordance with the following requirements:

(1) A request for the authorization to file a motion to submit supplemental information is made within one month of the date for which the trial has been instituted.

(2) The supplemental information must be relevant to a claim for which the trial has been instituted.

Here, Petitioner's request for authorization to file the motion was made within one month of the date for which trial was instituted (i.e., September 30, 2014). Petitioner also indicates that the supplemental information is relevant to claims 16–19, for which trial has been instituted. Paper 15, 2.

After conferral, the panel authorized Petitioner to file a motion to submit supplemental information of no more than 5 pages in length. The panel also advised Petitioner that it should file the supplemental information that it seeks to have entered using its next available exhibit number. The motion is due no later than 5 pm ET on November 6, 2014. The panel also authorized Patent Owner to file an opposition to the motion of no more than 5 pages in length by 5 pm ET on November 13, 2014.

No further additional motions are authorized in this proceeding at this time.²

6. Motion to Amend

Although Patent Owner may file one motion to amend the patent by cancelling or substituting claims without Board authorization, Patent Owner must confer with the Board before filing a motion to amend. 37 C.F.R. § 42.121(a). During the call, Patent Owner indicated that it does not intend presently to file a motion to amend. Should circumstances change, Patent Owner should arrange a conference call with the panel and opposing counsel at least one week before DUE DATE 1 in order to satisfy the requirement to confer set forth in 37 C.F.R. § 42.121(a).

7. Settlement

The parties stated that there is no immediate prospect of settlement that will affect the conduct of this proceeding.

8. Orders

It is

ORDERED that Petitioner is authorized to file a motion to submit supplemental information of no more than 5 pages in length that is due no later than 5 pm ET on November 6, 2014;

FURTHER ORDERED that Petitioner should file the supplemental information that it is seeking to have entered as an exhibit along with the motion;

² During the conference call, Petitioner's counsel indicated Petitioner may want to file a motion to admit another back-up counsel *pro hac vice* in this proceeding. We reminded Petitioner that authorization for such a motion was provided in the Notice of Filing Date Accorded Petition, Paper 3, 2.

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FURTHER ORDERED that Patent Owner is authorized to file an opposition to Petitioner's motion that is no more than 5 pages in length and is due no later than 5 pm ET on November 13, 2014; and

FURTHER ORDERED that trial will proceed in accordance with the Scheduling Order (Paper 10).

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PETITIONER:

George C. Rondeau, Jr.
DAVIS WRIGHT TREMAINE LLP
GeorgeRondeau@dwt.com

PATENT OWNER:

Stephen M. Schaetzel
Gregory J. Carlin
Warren Thomas
MCDERMOTT WILL & EMERY LLP
817 W. Peachtree St. NW
Suite 500
Atlanta, GA 30308
sschaetzel@mcciplaw.com
gcarlin@mcciplaw.com
wthomas@mcciplaw.com