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Paper 9
Entered: August 13, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FORTINET, INC.,
Petitioner,

v.

SOPHOS INC.,
Patent Owner.

Case IPR2015-00617 (Patent 6,195,587 B1)
Case IPR2015-00618 (Patent 8,261,344 B2)
Case IPR2015-00619 (Patent 8,607,347 B2)[1]

Before BRYAN F. MOORE, PETER P. CHEN, and
MICHELLE N. WORMMEESTER, *Administrative Patent Judges*.

WORMMEESTER, *Administrative Patent Judge*.

SCHEDULING ORDER

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[1] This order addresses issues that are the same in all identified cases. We exercise our discretion to issue one order to be filed in each case. The parties are not authorized to use this style heading in subsequent papers.

This Order sets a schedule for trial, including due dates for the parties to take action upon institution of the trial. *See* Appendix.

A. INITIAL CONFERENCE

The Appendix does not specify a date for an initial conference call. An initial conference call will be scheduled if either party requests it within 21 days after entry of this Order. If an initial conference call is scheduled, the parties are directed to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012) for guidance in preparing for the call, and should be prepared to discuss any proposed changes to the schedule and any motions the parties anticipate filing during the trial.

B. MEET AND CONFER REQUIREMENT

The parties are encouraged to engage in meaningful discussion before seeking authorization under 37 C.F.R. § 42.20(b) to file a motion for relief with the Board. At a minimum, before requesting authorization, the parties shall confer with each other in a good-faith effort to resolve the issue for which relief is to be sought. Only if the parties cannot resolve the issue on their own may a party request a conference call with the Board in order to seek authorization to move for relief.[2] In any request for a conference call with the Board, the requesting party shall: (1) certify that it has in good-faith conferred (or attempted to confer) with the other parties in an effort to resolve the issue; (2) identify with specificity the issue for which agreement has not been reached; (3) state the precise relief to be sought; and

[2] Patent Owner may file a motion to amend without prior authorization, but only after conferring with the Board. 37 C.F.R. § 42.121(a).

(4) propose specific dates and times at which both parties are available for the conference call.

C. DUE DATES

The Appendix specifies due dates for the parties to take action in this trial. The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). A notice of any stipulation, specifically identifying the changed due dates, must be filed promptly with the Board. The parties may not stipulate to an extension of DUE DATES 6 and 7.

In stipulating to 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 (37 C.F.R. § 42.64(b)(2)), to conduct cross-examination (37 C.F.R. § 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony (*see* section D, below).

1. DUE DATE 1

The patent owner may file—

a. A response to the petition (37 C.F.R. § 42.120), and

b. A motion to amend the patent (37 C.F.R. § 42.121).

The patent owner must file any such response or motion to amend by DUE DATE 1. If the patent owner elects not to file anything, the patent owner must arrange a conference call with the parties and the Board. The patent owner is cautioned that any arguments for patentability not raised in the response will be deemed waived.

2. DUE DATE 2

The petitioner must file any reply to the patent owner's response and opposition to the motion to amend by DUE DATE 2.

3. DUE DATE 3

The patent owner must file any reply to the petitioner's opposition to patent owner's motion to amend by DUE DATE 3.

4. DUE DATE 4

a. Each party must file any motion for an observation on the cross-examination testimony of a reply witness (*see* section C, below) by DUE DATE 4.

b. Each party must file any motion to exclude evidence (37 C.F.R § 42.64(c)) and any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 4.

5. DUE DATE 5

a. Each party must file any response to an observation on cross-examination testimony by DUE DATE 5.

b. Each party must file any opposition to a motion to exclude evidence by DUE DATE 5.

6. DUE DATE 6

Each party must file any reply for a motion to exclude evidence by DUE DATE 6.

7. DUE DATE 7

The oral argument (if requested by either party) is set for DUE DATE 7.

D. CROSS-EXAMINATION

Except as the parties might otherwise agree, for each due date—

1. Cross-examination begins after any supplemental evidence is due. 37 C.F.R. § 42.53(d)(2).

2. Cross-examination 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*.

E. MOTION FOR OBSERVATION ON CROSS-EXAMINATION

A motion for observation on cross-examination provides the parties with a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness because no further substantive paper is permitted after the reply. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,768. The observation must be a concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit. Each observation should not exceed a single, short paragraph. The opposing party may respond to the observation. Any response must be equally concise and specific.

F. PATENT OWNER'S MOTION TO AMEND

Pursuant to recent amendments to 37 C.F.R. § 42.24, the following page limits apply in this proceeding: a motion to amend, if filed, and petitioner's opposition to the motion to amend, each are limited to twenty-

five (25) pages; and patent owner's reply to the opposition to the motion to amend is limited to twelve (12) pages. *See* Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board, 80 Fed. Reg. 28,561, 28,565 (May 19, 2015). The page limit of the motion to amend does not include the claim listing set forth in 37 C.F.R. § 42.121(b), which, as amended, provides that the claim listing may be contained in an appendix to the motion. *See* 80 Fed. Reg. at 28,566.

G. PETITIONER'S REPLY

Pursuant to a recent amendment to 37 C.F.R. § 42.24(c), petitioner's reply brief to the patent owner's response to the petition is limited to twenty-five (25) pages. *See* 80 Fed. Reg. at 28,565.

DUE DATE APPENDIX

INITIAL CONFERENCE CALL ..... Upon Request

DUE DATE 1 ..... October 26, 2015

Patent owner's response to the petition

Patent owner's motion to amend the patent

DUE DATE 2 ..... January 11, 2016

Petitioner's reply to patent owner's response to petition

Petitioner's opposition to motion to amend

DUE DATE 3 ..... February 9, 2016

Patent owner's reply to petitioner's opposition to motion to amend

DUE DATE 4 ..... March 1, 2016

Motion for observation regarding cross-examination of reply witness

Motion to exclude evidence

Request for oral argument

DUE DATE 5 ..... March 15, 2016

Response to observation

Opposition to motion to exclude

DUE DATE 6 ..... March 22, 2016

Reply to opposition to motion to exclude

DUE DATE 7 ..... April 7, 2016

Oral argument (if requested)

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