

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TCL CORPORATION, TCL COMMUNICATION TECHNOLOGY
HOLDINGS, LTD., TCT MOBILE LIMITED, TCT MOBILE INC.,
and TCT MOBILE (US), INC.,
Petitioner,

v.

TELEFONAKTIEBOLAGET LM ERICSSON,
Patent Owner.

Case IPR2015-01674
Patent RE43,931 E

Before BENJAMIN D. M. WOOD, PATRICK R. SCANLON, and
BARBARA A. BENOIT, *Administrative Patent Judges*.

BENOIT, *Administrative Patent Judge*.

SCHEDULING ORDER

A. DUE DATES

This order sets due dates for the parties to take action after institution of the proceeding. 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 the stipulation, specifically identifying the changed due dates, must be promptly filed. 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 B, below).

The parties are reminded that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,772 (Aug. 14, 2012) (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 attorneys' fees incurred by any party may be levied on a person who impedes, delays, or frustrates the fair examination of a witness.

1. INITIAL CONFERENCE CALL

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 initial conference call, and should be prepared to discuss any proposed changes to this Scheduling Order, any motions the parties anticipate filing during the trial, the status of any settlement discussions, and preferred location for oral argument.

The parties are encouraged to promptly discuss alternative means for resolving their disputes regarding the subject matter of this proceeding. To advance the opportunities for early disposition, Petitioner is encouraged to notify the Board by email, before the initial conference call, that the parties have conferred regarding alternative dispute resolution and whether the parties have reached any agreements.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. DUE DATE 6

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

8. DUE DATE 7

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

B. 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.*

C. 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. 48,756, 48,768 (Aug. 14, 2012). 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.

D. MOTION TO AMEND

Under 37 C.F.R. §§ 42.24 and 42.121, a motion to amend, if filed in this proceeding, and the petitioner's opposition to the motion to amend are limited to twenty-five (25) pages; the patent owner's reply to the opposition to the motion to amend is limited to twelve (12) pages; and the claim listing may be contained in an appendix to the motion, which does not count toward the page limit of the motion. *See* 37 C.F.R. §§ 42.24, 42.121(b); Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board, 80 Fed. Reg. 28,561, 28,565–66 (Final Rule) (May 19, 2015).

Patent Owner is reminded that it must confer with the Board before filing a motion to amend. 37 C.F.R. § 42.121(a). Patent Owner should

contact the Board to request the conference in sufficient time to ensure that the conference is conducted at least one week before DUE DATE 1.

E. PETITIONER'S REPLY

Under 37 C.F.R. § 42.24(c), the petitioner's reply brief to the patent owner's response is limited to twenty-five (25) pages. *See* 37 C.F.R. § 42.24(c); Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board, 80 Fed. Reg. at 28,565.

F. OBJECTION TO EVIDENCE

Under 37 C.F.R. § 42.64(b)(1), once trial has been instituted, any objection must be *filed* within five business days of service of evidence to which the objection is directed. The objection must identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence. *See* 37 C.F.R. § 42.64(b)(1); Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board, 80 Fed. Reg. at 28,565. The party relying on evidence to which an objection is timely served may respond to the objection *by serving* supplemental evidence within ten business days of service of the objection. *See* 37 C.F.R. § 42.64(b)(2); Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board, 80 Fed. Reg. at 28,565.

DUE DATE APPENDIX

INITIAL CONFERENCE CALL April 6, 2016, 2:00 p.m. ET

DUE DATE 1 June 20, 2016

Patent owner's response to the petition

Patent owner's motion to amend the patent

DUE DATE 2 September 20, 2016

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

Petitioner's opposition to motion to amend

DUE DATE 3 October 20, 2016

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

DUE DATE 4 November 10, 2016

Motion for observation regarding cross-examination of reply witness

Motion to exclude evidence

Request for oral argument

DUE DATE 5 November 25, 2016

Response to observation

Opposition to motion to exclude

DUE DATE 6 December 1, 2016

Reply to opposition to motion to exclude

DUE DATE 7 December 15, 2016

Oral argument (if requested)

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