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Paper 7
Entered: October 13, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY CORPORATION,
Petitioner,

v.

COLLABO INNOVATIONS, INC.,
Patent Owner.

Case IPR2016-00941
Patent 5,952,714

Before DAVID C. MCKONE, GREGG I. ANDERSON, and JENNIFER MEYER CHAGNON, *Administrative Patent Judges*.

ANDERSON, *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. *See* 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

An initial conference call is not scheduled in this case. A party may request an initial conference call within 25 days after the institution of trial. A party requesting an initial conference call shall: (a) identify the proposed motions, if any, to be discussed during the call; and (b) propose two or more dates and times when both parties are available for the call. When an initial conference call is scheduled in response to a request, 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 the schedule in this proceeding.

2. DUE DATE 1

The patent owner may file a response to the petition (37 C.F.R. § 42.120). 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 by DUE DATE 2.

4. DUE DATE 3

Relates to motion to amend and not applicable.

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. *See* 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. *See 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. 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.

D. PETITIONER'S REPLY

Pursuant to 37 C.F.R. § 42.24(c), Petitioner's reply brief to patent owner response is limited to 25 pages.

E. PROTECTIVE ORDER

A protective order will not be entered in this proceeding unless the parties file one and the Board approves it. The parties are encouraged to adopt the Board's default protective order if a protective order is necessary. *See* Default Protective Order, Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,769 (App. B). If the parties choose to propose a protective order deviating from the default protective order, they must submit the proposed protective order along with a marked-up comparison of the proposed and default protective orders showing the differences. If either party files a motion to seal before entry of a protective order, a proposed protective order should be presented as an exhibit to the motion that has been discussed with the opposing party and, preferably, be jointly proposed. If the protective order is not jointly proposed, the proponent of the order should identify where the parties differ in the proposed language of the order.

DUE DATE APPENDIX

DUE DATE 1 ..... January 13, 2017

Patent owner's response to the petition

DUE DATE 2 ..... April 13, 2017

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

DUE DATE 3 ..... Not Applicable (relates to motion to amend)

DUE DATE 4 ..... June 5, 2017

Motion for observation regarding cross-examination of reply witness

Motion to exclude evidence

Request for oral argument

DUE DATE 5 ..... June 19, 2017

Response to observation

Opposition to motion to exclude

DUE DATE 6 ..... June 26, 2017

Reply to opposition to motion to exclude

DUE DATE 7 ..... July 11, 2017

Oral argument (if requested)

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