

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICRON TECHNOLOGY, INC.,
Petitioner,

v.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE,
Patent Owner.

Cases: IPR2017-00663
IPR2017-00664
Patent 8,334,016 B2

Before CHRISTOPHER L. CRUMBLEY, JON B. TORNQUIST, and
CHRISTOPHER M. KAISER, *Administrative Patent Judges*.

TORNQUIST, *Administrative Patent Judge*.

SCHEDULING ORDER
37 C.F.R. § 42.5

A. DUE DATES

The Appendix to 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), except that the parties may not modify the deadline for requesting oral argument. 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 C, 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. 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 observations on the cross-examination testimony of a reply witness (*see* section D, 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 observations 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.

Unless the Board notifies the parties otherwise, oral argument, if requested, will be held at the USPTO headquarters in Alexandria, Virginia. The parties may request that the oral argument instead be held at the Denver, Colorado, USPTO Regional Office. Note that the Board may not be able to honor the parties' preference of hearing location due to the availability of hearing room resources. The Board will consider the location request and notify the parties accordingly.

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. OBSERVATIONS ON CROSS-EXAMINATION

Observations on cross-examination provide 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 observations must be concise statements 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 observations. Any response must be equally concise and specific.

D. PROTECTIVE ORDER

A protective order does not exist in a proceeding until one is approved and entered by the Board. 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 deviating from, the default Standing Protective Order, they must submit a joint, proposed protective order. A marked-up comparison or red-lined version of the default protective order in Appendix B to the Board's Office Patent Trial Practice Guide should be presented with the motion to seal so that differences can be understood readily.

E. CONFERENCE CALLS

The panel encourages parties to resolve disputes relating to discovery on their own and in accordance with the precepts set forth in 37 C.F.R. § 42.1(b). To the extent that a dispute arises between the parties relating to discovery, the parties should meet and confer to resolve such a dispute before contacting the Board. If attempts to resolve the dispute fail, a party may request a conference call with the Board and the other party in order to seek authorization to move for relief.

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

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contact the Board to request such a conference at least two weeks before DUE DATE 1. We direct the parties to the Board's website for representative decisions relating to Motions to Amend among other topics.

The parties may access these representative decisions at:

http://www.uspto.gov/ip/boards/bpai/representative_orders_and_opinions.js
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DUE DATE APPENDIX

DUE DATE 1	October 23, 2017
Patent owner's response to the petition	
Patent owner's motion to amend the patent	
DUE DATE 2	January 23, 2018
Petitioner's reply to patent owner's response to petition	
Petitioner's opposition to motion to amend	
DUE DATE 3	February 23, 2018
Patent owner's reply to petitioner's opposition to motion to amend	
DUE DATE 4	March 16, 2018
Observation regarding cross-examination of reply witness	
Motion to exclude evidence	
Request for oral argument	
DUE DATE 5	March 28, 2018
Response to observation	
Opposition to motion to exclude	
DUE DATE 6	April 4, 2018
Reply to opposition to motion to exclude	
DUE DATE 7	April 18, 2018
Oral argument (if requested)	

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