

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SANDVINE CORPORATION and SANDVINE INCORPORATED ULC,  
Petitioner,

v.

PACKET INTELLIGENCE, LLC,  
Patent Owner.

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Case IPR2017-00863  
Patent 6,665,725 B1

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Before ELENI MANTIS MERCADER, JUSTIN T. ARBES, and  
WILLIAM M. FINK, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

SCHEDULING ORDER

A. DUE DATES

This order sets due dates for the parties to take action after institution of trial on the authorized grounds and claims. The parties may stipulate to

different dates for DUE DATES 1 through 3 (earlier or later, but no later than DUE DATE 4). 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 4–7.

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 file papers relying on the evidence and cross-examination testimony (see section B, below).

The parties are reminded that the Testimony Guidelines appended to the Trial Practice Guide, 77 Fed. Reg. 48756, 48772 (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 attorney 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.

2. DUE DATE 2

The petitioner may file a reply to the patent owner's response and an opposition to the patent owner's motion to amend. Any such filing must be made by DUE DATE 2.

3. DUE DATE 3

The patent owner may file a reply to the petitioner's opposition to patent owner's motion to amend. Any such filing must be made by DUE DATE 3.

4. DUE DATE 4

a. The petitioner may file a motion for an observation on the cross-examination testimony of a reply witness. (See section C, below). Any such filing must be made by DUE DATE 4.

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

5. DUE DATE 5

a. The patent owner may file a reply to a petitioner's observation on cross-examination testimony. Any such filing must be made by DUE DATE 5.

b. Each party may file an opposition to a motion to exclude evidence. Any such filing must be made 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.

## 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 petitioner with a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness, since no further substantive paper is permitted after the reply. *See* Office Trial Practice Guide, 77 Fed. Reg. 48756, 48768 (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 patent owner may respond to the observation. Any response must be equally concise and specific.

DUE DATE APPENDIX

DUE DATE 1.....December 1, 2017

Patent owner's response to the petition

Patent owner's motion to amend the patent

DUE DATE 2..... March 1, 2018

Petitioner's reply to Patent Owner's response to petition

Petitioner's opposition to Patent Owner's motion to amend

DUE DATE 3.....April 2, 2018

Patent Owner's reply to Petitioner's opposition to Patent

Owner's motion to amend

DUE DATE 4.....April 23, 2018

Petitioner's motion for observation regarding

cross-examination of reply witness

Motion to exclude evidence

Request for oral argument

DUE DATE 5.....May 7, 2018

Patent Owner's response to observation

Opposition to motion to exclude evidence

DUE DATE 6.....May 14, 2018

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Reply to opposition to motion to exclude evidence

DUE DATE 7.....May 22, 2018

Oral argument (if requested)

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