

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL INC.; RIVERBED TECHNOLOGY, INC.;
HEWLETT-PACKARD ENTERPRISE CO.;
HP ENTERPRISE SERVICES, LLC; TERADATA OPERATIONS, INC.;
ECHOSTAR CORPORATION; and
HUGHES NETWORK SYSTEMS, LLC,
Petitioners,

v.

REALTIME DATA LLC,
Patent Owner.

Case IPR2016-00972
Patent 7,415,530 C1

Before GEORGIANNA W. BRADEN, J. JOHN LEE, and
JASON J. CHUNG, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

SCHEDULING ORDER
37 C.F.R. § 42.5

A. GENERAL INSTRUCTIONS

1. Initial Conference Call

The parties are directed to contact the Board within ten (10) business days of the date of this decision if there is a need to discuss proposed changes to this Scheduling Order (i.e., regarding DUE DATES 6 and 7) or any proposed motions, *not* authorized already by our Rules or by this Scheduling Order, which the parties anticipate filing during the trial. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012) (setting forth guidance in preparing for the initial conference call).

2. Protective Order

A protective order is not entered in this proceeding unless the parties propose one and the Board approves it. If either party files a motion to seal before entry of a protective order, a jointly proposed protective order should be presented as an exhibit to the motion. We encourage the parties to adopt the Board's default protective order if they conclude that a protective order is necessary. *See* Default Protective Order, Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, App. B. If the parties choose to propose a protective order deviating from the default protective order, they must submit the proposed protective order jointly along with a marked-up comparison of the proposed and default protective orders showing the differences.

The Board has a strong interest in the public availability of the proceedings. We advise the parties that redactions to documents filed in this proceeding should be limited strictly to isolated passages consisting entirely of confidential information, and that the thrust of the underlying argument or

evidence must be clearly discernible to the public from the redacted versions. We also advise the parties that information subject to a protective order will become public if identified in a final written decision in this proceeding, and that a motion to expunge the information will not necessarily prevail over the public interest in maintaining a complete and understandable file history. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,761; 37 C.F.R. § 42.56.

Notwithstanding the default filing times for an opposition and a reply reflected in 37 C.F.R. § 42.25(a):

(1) an opposition, if any, to a motion to seal is due seven days after service of the motion; and

(2) a reply, if any, to an opposition to a motion to seal is due seven days after service of the opposition.

3. Motion to Amend

Patent Owner may file a motion to amend without prior authorization from the Board. Nevertheless, Patent Owner must confer with the Board before filing such a motion. *See* 37 C.F.R. § 42.121(a). Patent Owner should arrange for a conference call with the panel and opposing counsel at least 10 business days before DUE DATE 1 in order to satisfy the requirement for a conference. 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.jsp.

4. Discovery Disputes

The panel encourages the 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 shall meet and confer to resolve such a dispute before contacting the Board. If attempts to resolve the dispute fail, either party may request a conference call with the Board and the other party in order to seek authorization to move for relief.

In any request for a conference call with the Board to resolve a discovery dispute, the requesting party shall: (a) certify that it has conferred with the other party in an effort to resolve the dispute; (b) identify with specificity the issues for which agreement has not been reached; (c) identify the precise relief to be sought; and (d) propose specific dates and times at which both parties are available for the conference call.

5. Depositions

The parties are advised that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,772, App. D, apply to this proceeding. The Board may impose an appropriate sanction or sanctions 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.

Whenever a party submits a deposition transcript as an exhibit in this proceeding, the submitting party shall file the full transcript of the deposition rather than excerpts of only those portions being cited. After a deposition transcript has been submitted as an exhibit, all parties who subsequently cite to portions of the transcript shall cite to the first-filed exhibit rather than submitting another copy of the same transcript.

6. 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.*

7. 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. No observation should exceed a single, short paragraph. The opposing party may respond to the observation. Any response must be equally concise and specific.

B. 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).¹ 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

¹ The parties may not change DUE DATE 4 with respect to the requirement for requesting oral argument, without the express permission of the panel.

DATES 6 and 7, and, if either party anticipates the need to alter DUE DATE 7, the parties must schedule a conference call with the panel *immediately* upon identifying any conflict or potential conflict with DUE DATE 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.

1. DUE DATE 1

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).

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

2. DUE DATE 2

Petitioner must file any reply to Patent Owner's response and opposition to the motion to amend by DUE DATE 2.

3. *DUE DATE 3*²

Patent Owner must file any reply to 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 A.7, above) 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 reply to a Petitioner 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.

² The parties are advised that if no Motion to Amend is filed in this proceeding, DUE DATE 3 is moot, and the panel may advance DUE DATES 4–7 *sua sponte*.

DUE DATE APPENDIX

INITIAL CONFERENCE CALL Optional

DUE DATE 1 January 18, 2017

Patent Owner's response to the Petition

Patent Owner's motion to amend the patent

DUE DATE 2 April 5, 2017

Petitioner's reply to Patent Owner's response to the Petition

Petitioner's opposition to motion to amend

DUE DATE 3 May 10, 2017

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

DUE DATE 4 May 24, 2017

Motion for observation regarding cross-examination of reply witness

Motion to exclude evidence

Request for oral argument

DUE DATE 5 June 7, 2017

Response to observation

Opposition to motion to exclude

DUE DATE 6 June 14, 2017

Reply to opposition to motion to exclude

DUE DATE 7 July 13, 2017

Oral argument (if requested)

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