

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC. and HULU, LLC,
Petitioner,

v.

DIVX, LLC,
Patent Owner.

IPR2020-00558
Patent 10,225,588 B2

Before KEVIN F. TURNER, BART A. GERSTENBLITH, and
IFTIKHAR AHMED, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

A conference call in IPR2020-00558 occurred on March 23, 2021. Respective counsel for Petitioner and Patent Owner and Judges Turner, Gerstenblith, and Ahmed were in attendance. Patent Owner requested the conference call, seeking authorization to set a time and place for Patent Owner's deposition of Petitioner's reply declarant pursuant to 37 C.F.R. § 42.53(d)(1). *See* Paper 32. Patent Owner indicated that the parties had met and conferred but were unable to reach agreement on the time and place for taking testimony.

On the conference call, Patent Owner indicated that it had requested up to seven hours for cross-examination of deponent Dr. Patrick McDaniel, consistent with the time limits expressly provided in § 42.53(c)(2). Petitioner countered that a half day deposition would be appropriate, given the short page length of the reply declaration (Ex. 1031). Petitioner's counsel indicated that the deposition should cover at most 3 ½ hours, commensurate with its assertions. Patent Owner indicated that the reply declaration considered ten additional exhibits, of which six of those exhibits were new, requiring additional time. Both parties indicated that the deposition would occur via video conference over the Internet.

The panel conferred and agreed to the duration indicated by Patent Owner. In particular, the panel does not find that Petitioner established a sufficient basis to require modification of the time constraints set forth in § 42.53(c)(2). The panel leaves to the parties to jointly select a date for the deposition, with the understanding that it should be limited to the declaration testimony (Ex. 1031).

In consideration of the foregoing, it is hereby:

ORDERED that the duration of the testimony of Dr. McDaniel will be up to seven hours as set forth in 37 C.F.R. § 42.53(c)(2), on a date selected jointly by the parties.

IPR2020-00558
Patent 10,225,588 B2

For PETITIONER:

Harper Batts
Jeffrey Liang
Chris Ponder
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
HBatts@sheppardmullin.com
CPonder@sheppardmullin.com
JLiang@sheppardmullin.com
LegalTm-DivX-IPR@sheppardmullin.com

For PATENT OWNER:

Kenneth J. Weatherwax
Nathan Lowenstein
Bridget Smith
Flavio Rose
Edward Hsieh
Parham Hendifar
Patrick Maloney
Jason C. Linger
LOWENSTEIN & WEATHERWAX LLP
weatherwax@lowensteinweatherwax.com
DivX_IPRs@lowensteinweatherwax.com