

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ORTHOCISION, INC.,
Petitioner,

v.

PAIN TEQ, LLC,
Patent Owner.

IPR2023-00625
Patent 11,020,129 B2

Before MICHAEL L. WOODS, RYAN H. FLAX, and
MICHAEL A. VALEK, *Administrative Patent Judges*.

FLAX, *Administrative Patent Judge*.

SECOND MODIFIED SCHEDULING ORDER
37 C.F.R. § 42.5(a) and (c)

Pain TEQ, LLC (“Patent Owner”) is the owner of U.S. Patent 11,020,129 B2 (Ex. 1001, “the ’129 patent”). Paper 7, 1. On February 22, 2023, Orthocision, Inc. (“Petitioner”) filed a Petition for *inter partes* review challenging the patentability of claims 1, 2, 9, and 10 of the ’129 patent. Paper 3, 1, 3, 51–85 (“Pet.”). Trial was instituted on September 20, 2023. Paper 10 (Institution Decision). On that same day, we entered the original Scheduling Order in this proceeding. Paper 11.

Over the course of this proceeding, the parties have stipulated three times to schedule modifications (to Due Dates 1, 2, and 3) that, although within the rules and dictates of our original Scheduling Order, resulted in conflicts with the other due dates of the schedule that cannot be changed by stipulation. *See* Papers 15, 17, and 21. For example, the parties’ stipulated modifications would have moved Due Date 3 to be later than Due Dates 4–6, and to coincide with Due Date 7, as those dates were set forth in the original Scheduling Order. *See* Papers 11, 21; Ex. 3001.

On May 7, 2024, we entered a First Modified Scheduling Order, wherein we modified Due Dates 3–7 based largely upon the parties’ stipulated modification to Due Date 1 (Paper 15), so as to provide for a logical sequence and spacing of due dates and set a final hearing date, if requested, of July 1, 2024, to allow sufficient time to prepare a final decision. This, however, was not satisfactory to the parties, who explained challenges they were experiencing with scheduling certain discovery so as to allow Patent Owner’s briefing to comply with the schedule. Ex. 3001. For this reason, we held then-scheduled upcoming due dates in abeyance, and held a conference call between the parties and Panel on May 10, 2024. *Id.*

At the conference call, the parties explained that they had resolved their discovery issues and a date for a desired deposition was set. Therefore, the parties jointly requested that Due Date 3 be set for May 31, 2024. The Panel agrees to this change.

The parties also jointly expressed that they had no need to change any other Due Date as set forth in the First Modified Scheduling Order because they each expect to request an oral hearing and neither intends to file any motions to exclude evidence in this proceeding. In view of this, we will set Due Date 4 to coincide with Due Date 3 (May 31, 2024) for the sake of maintaining a linear schedule. No other changes to the schedule will be made at this time.

If the parties require any other changes to the schedule, they should contact the Board and request a conference call, after meeting and conferring.

It is hereby

ORDERED that the schedule of the proceeding is modified to that shown in the Appendix to this Order; and

FURTHER that no further stipulations of schedule modifications by the parties shall be allowed in this proceeding.

DUE DATE APPENDIX

DUE DATE 1 December 22, 2023

Patent Owner's response to the petition

Patent Owner's motion to amend the patent

DUE DATE 2 March 29, 2024

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

Petitioner's opposition to motion to amend

DUE DATE 3 May 31, 2024

Patent Owner's sur-reply to reply

Patent Owner's reply to opposition to motion to amend
(or Patent Owner's revised motion to amend)¹

DUE DATE 4 May 31, 2024

Request for oral argument (may not be extended by stipulation)

DUE DATE 5 June 7, 2024

Petitioner's sur-reply to reply to opposition to motion to amend

Motion to exclude evidence

DUE DATE 6 June 14, 2024

Opposition to motion to exclude

Request for prehearing conference

DUE DATE 7 June 21, 2024

Reply to opposition to motion to exclude

DUE DATE 8 July 1, 2024

Oral argument (if requested)

¹ If Patent Owner files neither a reply to Petitioner's opposition to the MTA nor a revised MTA, the parties are directed to Section III(C) above.

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