

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SOPHOS LTD. and SOPHOS INC.,
Petitioner,

v.

OPEN TEXT INC.,
Patent Owner.

IPR2023-00731 (Patent 8,201,243 B2)
IPR2023-00732 (Patent 8,719,932 B2)¹

Before JUSTIN T. ARBES, BARBARA A. PARVIS, and
SCOTT RAEVSKY, *Administrative Patent Judges*.

RAEVSKY, *Administrative Patent Judge*.

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

¹ This Order addresses issues that are same in each of the above captioned proceedings, and we exercise our discretion to issue one Order to be filed in each proceeding. The proceedings have not been consolidated, and the parties are not authorized to use this style heading in any subsequent papers.

On September 29, 2023, the Board conducted a telephone conference with the parties to discuss Petitioner's request for authorization to file a motion to dismiss the petitions in each of the above-captioned proceedings. Judges Arbes, Parvis, and Raevsky participated on behalf of the Board.

Petitioner seeks authorization to file a motion to dismiss in order to refile its petitions. During the call, Petitioner argued that authorizing the motion to dismiss would be more efficient for the Board because the new petitions would include revised declarations that better support the public accessibility of the primary reference. Patent Owner argued that authorizing the motion (and subsequent petition refiling) would be prejudicial because responding to revised petitions would increase Patent Owner's costs. Both sides presented supporting caselaw.

In order to have a more complete record on this issue, including a fuller discussion of the cited caselaw, we determine that briefing would assist the Board and therefore grant Petitioner's request.

Accordingly, it is

ORDERED that Petitioner is authorized to file a motion to dismiss both petitions, no more than 5 pages, due by Friday, October 6, 2023; and

FURTHER ORDERED that Patent Owner is authorized to file an opposition to Petitioner's motion, no more than 5 pages, due by Friday, October 13, 2023.

IPR2023-00731, IPR2023-00732
Patents 8,201,243 B2, 8,719,932 B2

For PETITIONER:

Benjamin Hershkowitz
Timothy Best
GIBSON, DUNN & CRUTCHER LLP
bhershkowitz@gibsondunn.com
tbest@gibsondunn.com

For PATENT OWNER:

Brian Eutermoser
Russell E. Blythe
Mikaela Stone
KING & SPALDING LLP
beutermoser@kslaw.com
rblythe@kslaw.com
mikaela.stone@kslaw.com