

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FORCEPOINT LLC,
Petitioner,

v.

OPEN TEXT INC.,
Patent Owner.

IPR2023-00784 (Patent 8,438,386 B2)
IPR2023-00786 (Patent 10,025,928 B2)

Before JUSTIN T. ARBES, BARBARA A. PARVIS, and
MICHELLE N. WORMMEESTER, *Administrative Patent Judges*.

PARVIS, *Administrative Patent Judge*.

ORDER¹
Conduct of the Proceeding
37 U.S.C. § 42.5

On March 31, 2023, Forcepoint LLC (“Petitioner”) filed a Petition in each of the instant proceedings. *See, e.g.*, IPR2023-00784, Paper 2.² On

¹ This Order addresses issues that are the same in the identified cases. The parties are not authorized to use this filing style in subsequent papers.

² Herein we reference submissions in IPR2023-00784, unless otherwise noted. Similar arguments were made in the other proceeding.

August 17, 2023, Open Text Inc. (“Patent Owner”) filed a Preliminary Response in each of the instant proceedings. *See, e.g.*, IPR2023-00784, Paper 6. On October 24, 2023, Petitioner contacted the Board via e-mail requesting leave to file replies to Patent Owner’s Preliminary Responses. *See, e.g.*, IPR2023-00784, Ex. 3001. Petitioner indicated that Patent Owner opposes Petitioner’s request. *Id.*

On October 26, 2023, a call was held with Judges Arbes, Parvis, and Wormmeester and respective counsel for the parties. Petitioner requests leave to file a five-page brief in each proceeding providing updates to the parallel District Court proceeding. Petitioner also requests leave to provide its proposed *Sand Revolution*-type stipulation in its briefs.³ Petitioner acknowledges that the District Court has not entered an updated Scheduling Order or reset the trial date, but Petitioner argues that good cause exists for its request to file replies to Patent Owner’s Preliminary Responses to explain practicalities associated with the family of cases involving many related proceedings and defendants that Petitioner argues make the current trial date unlikely. Petitioner also acknowledges that it already addressed the median time to trial in its Petitions. Petitioner provides an alternative request, if we do not authorize Petitioner to file replies. In particular, Petitioner requests authorization to file a Notice with its proposed stipulation in each proceeding not to exceed two pages.

Patent Owner opposes Petitioner’s request on the basis that it is too late for Petitioner to offer a stipulation and the trial schedule has not changed. Patent Owner argues that rescheduling of at least one trial

³ *See Sand Revolution II, LLC v. Continental Intermodal Grp. – Trucking LLC*, IPR2019-01393, Paper 24 at 12 (PTAB June 16, 2020) (informative).

involving a different defendant undermines Petitioner's argument for good cause. In light of Petitioner's late request, Patent Owner requests leave to file an opposition in each proceeding if we allow Petitioner to file either replies or Notices with Petitioner's proposed stipulation.

We find that Petitioner has not provided good cause for filing replies to Patent Owner's Preliminary Responses because Petitioner has not identified new information that supports that good cause exists for allowing further briefing. Petitioner also has not provided good cause for waiting over two months after Patent Owner filed its Preliminary Responses to request further briefing. We, however, authorize Petitioner to file a two-page Notice in each of the instant proceedings with its proposed *Sand Revolution*-type stipulation no later than two business days after the date of this Order. To mitigate Patent Owner's concerns regarding Petitioner's late filing, we also authorize Patent Owner to file a two-page brief in each of the instant proceedings no later than two business days after the date of the filing of Petitioner's Notice and limited to addressing the impact of Petitioner's stipulation on factor 4 of the *Fintiv* analysis.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner is authorized to file a two-page Notice in each of the instant proceedings no later than two business days after the date of this Order and limited to setting forth Petitioner's proposed stipulation; and

FURTHER ORDERED that Patent Owner is authorized to file a two-page brief in each of the instant proceedings no later than two business days

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after the date of the filing of Petitioner's Notice and limited to addressing the impact of Petitioner's stipulation on factor 4 of the *Fintiv* analysis.

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