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Paper 41
Date: July 3, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC., INSTAGRAM, INC., WHATSAPP LLC, META PLATFORMS TECHNOLOGIES, LLC, AND GIPHY, INC.,
Petitioner,

v.

VL COLLECTIVE IP LLC,
Patent Owner.

IPR2023-00923 (Patent 7,266,682 B2)
IPR2023-00924 (Patent 7,436,980 B2)

Before KARL D. EASTHOM, JEFFREY S. SMITH, and DAVID C. McKONE, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

ORDER
Granting Patent Owner's Request to Submit Supplemental Information in Both Proceedings and to Increase the Word Count of its Sur-Reply in IPR2023-00924, and Granting Petitioner's Request to File Observations in Both Proceedings
37 C.F.R. § 42.123(a)

For IPR2023-00923, in an email to the Board dated June 27, 2024, Patent Owner requested permission to submit a declaration from a librarian and a declaration from Dr. Stubblebine with its Sur-Reply to address issues raised by Petitioner's declarant Dr. Hall-Ellis in Exhibit 1019. For IPR2023-00924, in a separate email to the Board dated June 27, 2024, Patent Owner requested permission to submit a supplemental declaration from Dr. Saber to address issues raised by Petitioner in Petitioner's Reply, and also requested permission to increase the word count limit for Patent Owner's Sur-Reply by 4,000 words.

On July 1, 2024, the Board and the parties had a conference call to discuss these requests. During the call, the Board authorized Patent Owner to submit a declaration from a librarian and a declaration from Dr. Stubblebine in IPR2023-00923 to address issues raised by Dr. Hall-Ellis in Exhibit 1019. For IPR2023-00924, the Board authorized Patent Owner to submit a declaration from Dr. Saber and granted permission for Patent Owner to increase the word count limit for Patent Owner's Sur-Reply by 2,000 words to address issues raised by Petitioner in Petitioner's Reply. The Board also requested the parties to meet and confer to propose a schedule for submitting the supplemental evidence for both proceedings.

In an email dated July 2, 2024, the parties agreed to the following schedule regarding the supplemental information:

- July 24, 2024: Deadline for Patent Owner to provide supplemental information (as authorized by Board)
- July 29, 2024: Deadline for Petitioner to object to the supplemental information
- August 1, 2024: Deadline for Patent Owner to provide any supplemental evidence under 37 C.F.R. § 42.64(B)(2) to address the Petitioner's objections

- August 15, 2024: Deadline for Petitioner's cross-examination of Patent Owner's supplemental information declarants
- August 28, 2024: Deadline for Petitioner to file any observations for the Board regarding the cross-examinations.

In the email of July 2, the parties stated that they did not agree to page limits for the declarations and did not agree to page limits for observations. The parties also stated that they did not agree on whether the deposition of Dr. Stubblebine must occur within the United States.

The Board agrees to the schedule proposed by the parties. With respect to page limits, the Board does not impose page limits on the declarations. The Board also does not impose page limits on the observations. The Board reminds the parties that argument must be provided in the briefs and the subject matter of the declarations is limited to evidence responding to issues raised in Petitioner's Reply in each proceeding. The Board also reminds the parties that an observation is a concise statement of the relevance of identified testimony to an identified portion of an exhibit. An observation is not an opportunity to raise new issues, re-argue issues, or pursue objections. Each observation should be in the following form:

> In exhibit __, on page __, lines __, the witness testified __. This testimony is relevant to the __ on page __ of __. The testimony is relevant because __.

See Office Patent Trial Practice Guide, 77 Fed. Reg. 48656, 48769 (Aug. 2012). The entire observation shall not exceed one paragraph. *See id.* The Board may refuse entry of excessively long or argumentative observations.

With respect to the location of the depositions, we remind the parties that "[e]xcept as the Board otherwise orders, during the testimony period, deposition testimony may be taken at any reasonable time and location within the United States." 37 C.F.R. § 42.53(b)(2). At this time, we do not authorize testimony to be taken outside of the United States. If the parties agree to

conduct the deposition of Dr. Stubblebine outside the United States or to conduct the deposition by videoconference, the parties must contact the Board for permission to do so. Otherwise, all witnesses must be available for cross-examination within the United States.

It is therefore

ORDERED that Patent Owner is authorized to submit a deposition from a librarian and a deposition from Dr. Stubblebine with its Sur-Reply to address issues raised by Dr. Hall-Ellis in Exhibit 1019 of IPR2023-00923;

FURTHER ORDERED that Petitioner is authorized to cross-examine the librarian and Dr. Stubblebine regarding their respective deposition testimonies and to file observations on cross-examination;

FURTHER ORDERED that Patent Owner shall make Dr. Stubblebine available for deposition in the United States;

FURTHER ORDERED that Patent Owner is authorized to submit a deposition from Dr. Saber with its Sur-Reply to address issues raised by Petitioner in the Reply in IPR2023-00924;

FURTHER ORDERED that Patent Owner is authorized to increase the word count for Patent Owner's Sur-Reply in IPR2023-00924 by 2,000 words;

FURTHER ORDERED that Petitioner is authorized to cross-examine Dr. Saber regarding the declaration testimony and to file observations on cross-examination;

FURTHER ORDERED that the parties will adhere to the following schedule for both proceedings:

- July 24, 2024: Deadline for Patent Owner to provide supplemental information (as authorized by Board)
- July 29, 2024: Deadline for Petitioner to object to the supplemental information
- August 1, 2024: Deadline for Patent Owner to provide any supplemental evidence under 37 C.F.R. § 42.64(B)(2) to address the Petitioner's objections
- August 15, 2024: Deadline for Petitioner's cross-examination of Patent Owner's supplemental information declarants
- August 28, 2024: Deadline for Petitioner to file any observations for the Board regarding the cross-examinations.

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