

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

K/S HIMPP,
Petitioner,

v.

BRAGI GMBH,
Patent Owner.

IPR2023-01150
Patent 9,843,853 B2

Before LARRY J. HUME, STACEY G. WHITE, and
MICHELLE N. WORMMEESTER, *Administrative Patent Judges*.

HUME, *Administrative Patent Judge*.

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

I. INTRODUCTION

On June 13, 2024, Petitioner K/S HIMPP requested, by email (Ex. 3002), authorization to move Petitioner's Opposition to Patent Owner's Motion to Amend from July 12, 2024 to July 19, 2024 (DUE DATE 2), and Patent Owner's Reply to Petitioner's Opposition from August 23, 2024 to August 30, 2024 (DUE DATE 3). This request was represented by Petitioner as being necessary due to the availability of Patent Owner's expert witness for deposition on July 12, 2024. Petitioner also represented that Patent Owner (BRAGI GMBH) does not oppose this request.

Petitioner also represented that the parties have, by joint stipulation, also agreed to move Petitioner's Sur-Reply to the Opposition to the Motion to Amend from September 27, 2024 to October 4, 2024 (DUE DATE 5).

II. DISCUSSION

"The Board may set times by order. Times set by rule are default and may be modified by order. Any modification of times will take any applicable statutory pendency goal into account." 37 C.F.R. § 42.5(c)(1). "A request for an extension of time must be supported by a showing of good cause." *Id.* § 42.5(c)(2).

The parties may not stipulate to a different date for the portion of DUE DATE 2 related to Petitioner's opposition to a motion to amend, or for the portion of DUE DATE 3 related to Patent Owner's reply to an opposition to a motion to amend (or Patent Owner's revised motion to amend) without prior authorization from the Board. In stipulating to move any due dates in the scheduling order, the parties must be cognizant that the Board requires four weeks after the filing of an opposition to the motion to amend (or the due date for the opposition, if none is filed) for the Board to issue its preliminary guidance, if requested by Patent Owner.

Scheduling Order (Paper 9), 8–9.

Taking Petitioner’s statement as true regarding the delay in availability of Patent Owner’s expert for deposition, we find that Petitioner has made an adequate showing of good cause for the extension of Due Dates 2 and 3.¹ Further, as discussed above, we note the parties have jointly stipulated to extending Due Date 5 to October 4, 2024.

III. ORDER

It is:

ORDERED that, Petitioner’s unopposed request to extend Due Date 2 (Petitioner’s opposition to Patent Owner’s Motion to Amend) to July 19, 2024 is granted;

FURTHER ORDERED that, Petitioner’s unopposed request to extend Due Date 3 (Patent Owner’s Reply to Petitioner’s Opposition) to August 30, 2024 is granted; and

FURTHER ORDERED that, absent further stipulation, Due Date 5 (Petitioner’s Sur-Reply to Patent Owner’s Reply to the Opposition to the Motion to Amend) is extended by joint stipulation to October 4, 2024.

¹ Based upon revised Due Date 2, the parties may expect the Board’s Preliminary Guidance to issue on or about August 16, 2024.

IPR2023-01150
Patent 9,843,853 B2

FOR PETITIONER:

Haixia Lin
Brian Lambson
Trishan Efram
WILMER CUTLER PICKERING HALE AND DORR LLP
haixia.lin@wilmerhale.com
brian.lambson@wilmerhale.com
trishan.esram@wilmerhale.com

FOR PATENT OWNER:

Richard A. Kamprath
Scott W. Hejny
MCKOOL SMITH, P.C
rkamprath@mckoolsmith.com
shejny@mckoolsmith.com