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Paper 18
Date: October 11, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

WIPQTUS INC.,
Patent Owner.

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IPR2024-00023
Patent 10,038,339 B2

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Before KARL D. EASTHOM, STEVEN M. AMUNDSON, and RUSSELL E. CASS, *Administrative Patent Judges*.

AMUNDSON, *Administrative Patent Judge*.

# REVISED SCHEDULING ORDER

## A. REVISED MOTION TO AMEND

### 1. INTRODUCTION

On October 9, 2024, Patent Owner filed a revised motion to amend ("revised MTA") according to the Scheduling Order (Paper 8) and the March 15, 2019 Federal Register notice regarding a new pilot program relating to motion to amend practice at the Office. *See* Notice Regarding a New Pilot Program Concerning Motion to Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board, 84 Fed. Reg. 9,497 (Mar. 15, 2019) ("MTA Pilot"). In accordance with the MTA Pilot, we revise the Scheduling Order (Paper 8) to set subsequent due dates based on the date Patent Owner filed its revised MTA. *See* MTA Pilot, Appendix 1B (Revised MTA Timeline).

In particular, this Revised Scheduling Order adds DUE DATES RMTA1 and RMTA2 and modifies and supersedes DUE DATE 4 and subsequent due dates as presented in the Scheduling Order (Paper 8). Further, this Revised Scheduling Order supplements the instructions provided in earlier Scheduling Order, including those discussing the content of the briefing related to the revised MTA. To the extent that the earlier Scheduling Order provides instructions that are not addressed in this Revised Scheduling Order, the original instructions remain in effect.

### 2. EVIDENCE AND DEPOSITIONS

Generally speaking, new evidence (including declarations) may be submitted with every paper related to the revised MTA, except sur-replies. Specifically, both Petitioner's opposition to the revised MTA and Patent Owner's reply to Petitioner's opposition may be accompanied by new evidence that responds to issues raised in the Preliminary Guidance

(Paper 15) or in the corresponding revised MTA or the opposition. Petitioner's sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.

Once likely declarants are known, the parties should confer as to dates for scheduling all depositions related to the revised MTA after the relevant papers will be filed. The Board expects parties to make their declarants available for such depositions promptly, and to make their attorneys available to take and defend such depositions. Any unavailability will not be a reason to adjust the schedule for briefing on a revised MTA absent extraordinary circumstances.

If Petitioner submits a declaration with its opposition to the revised MTA or if Patent Owner submits a declaration with its reply to Petitioner's opposition, the submitting party should typically make the declarant available for deposition within one week after filing the declaration. As needed, the parties may agree to shortened periods for making objections and serving supplemental evidence before a deposition. *See* 37 C.F.R. §§ 42.53(d)(2), 42.64(a)–(b). In the absence of such an agreement, the parties shall schedule such depositions in advance of a due date for serving supplemental evidence. If, after receiving supplemental evidence, a party believes in good faith that the supplemental evidence requires further cross-examination of a declarant, the party should contact the Board for a conference call. Again, it is incumbent upon the parties to work cooperatively to schedule depositions of their respective declarants. Thus, the Board strongly encourages the parties to meet and confer as soon as practicable (including before anticipated declarations are submitted, if possible) to coordinate schedules.

Because Patent Owner's reply and Petitioner's sur-reply as to the revised MTA are due near or after motions to exclude are due, the parties might not have an opportunity to object to evidence submitted with the reply or the sur-reply and file a motion to exclude such evidence before the oral hearing. *See* 37 § C.F.R. 42.64. Thus, if needed, a party may seek authorization to file a motion to exclude reply evidence or sur-reply evidence after the oral hearing or may make an oral motion to exclude and argue such a motion at the oral hearing.

## B. DUE DATES

This Revised Scheduling Order sets due dates for the parties to take action by DUE DATE RMTA1 and after. The parties may stipulate different dates for DUE DATES RMTA1, RMTA2, 5, and 6 (earlier or later, but no later than DUE DATE 7). A notice of the stipulation, specifically identifying the changed due dates, must be promptly filed. The parties may not stipulate an extension of DUE DATES 4, 7, and 8.

In stipulating different dates, the parties should consider the effect of the stipulation on times to object to evidence (37 C.F.R. § 42.64(b)(1)), to supplement evidence (37 C.F.R. § 42.64(b)(2)), to conduct cross-examination (37 C.F.R. § 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony.

### 1. DUE DATE RMTA1

Petitioner may file an opposition to Patent Owner's revised MTA. Petitioner's opposition to Patent Owner's revised MTA may only respond to issues raised in the revised MTA or the Preliminary Guidance (Paper 15).

2. DUE DATE 4

Either party may file a request for oral argument (may not be extended by stipulation).

3. DUE DATE RMTA2

Patent Owner may file a reply to Petitioner's opposition to the revised MTA. Patent Owner's reply to Petitioner's opposition may only respond to issues raised in the opposition.

4. DUE DATE 5

Either party may file a motion to exclude evidence (37 C.F.R. § 42.64(c)).

5. DUE DATE 6

Either party may file an opposition to a motion to exclude evidence.

Either party may request that the Board hold a prehearing conference.

6. DUE DATE 7

Either party may file a reply to an opposition to a motion to exclude evidence.

Petitioner may file a sur-reply to Patent Owner's reply to the opposition to the revised MTA. Petitioner's sur-reply may only respond to issues raised in Patent Owner's reply to the opposition.

7. DUE DATE 8

Oral argument (if requested by either party) will be held on this date. Approximately one month before the hearing, the Board will issue an order setting the start time of the hearing and the procedures that will govern the parties' arguments.

REVISED DUE DATE APPENDIX

DUE DATE RMTA1 ..... November 20, 2024

Petitioner's opposition to Patent Owner's revised motion to amend

DUE DATE 4 ..... November 27, 2024

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

DUE DATE RMTA2 .....December 12, 2024

Patent Owner's reply to Petitioner's opposition to the revised motion to amend

DUE DATE 5 .....December 20, 2024

Motion to exclude evidence

DUE DATE 6 .....December 27, 2024

Opposition to motion to exclude

Request for prehearing conference

DUE DATE 7 .....January 3, 2025

Reply to opposition to motion to exclude

Petitioner's sur-reply to Patent Owner's reply to the opposition to the revised motion to amend

DUE DATE 8 .....January 10, 2025

Oral argument (if requested)

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