

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MEDIATEK INC., AND
MEDIATEK USA INC.,

Petitioners

v.

PARKERVISION, INC.,

Patent Owner.

Case No: IPR2024-00150

U.S. Patent No. 7,292,835

PROTECTIVE ORDER

DEFAULT PROTECTIVE ORDER

The following Default Protective Order will govern the filing and treatment of confidential information in the proceeding:

Default Protective Order

This protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL.”
2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:
 - (A) Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.
 - (B) Party Representatives. Representatives of record for a party in the proceeding.
 - (C) Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party,

or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

(D) In-house counsel. In-house counsel of a party.

(E) Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives confidential information.

(F) The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in

(d)(2)(A)–(E), shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person and after signing the Acknowledgment. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

4. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

- (A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;
- (B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;
- (C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

5. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

(A) Documents and Information Filed With the Board.

(i) A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the

confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(B) Documents and Information Exchanged Among the Parties.

Documents (including deposition transcripts) and other information designated as confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as “PROTECTIVE ORDER MATERIAL” and shall be produced in a manner that maintains its confidentiality.

6. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

(k) Standard Acknowledgement of Protective Order. The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:

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I. Standard Acknowledgment for Access to Protective Order Material

I _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any

disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

[Signature]

APPENDIX C: Model Order Regarding E-Discovery in Trials Before The Patent Trial and Appeal Board

The Board pursuant to 37 C.F.R. § 42.5 orders as follows:

1. This Order supplements all other discovery rules and orders. It streamlines Electronically Stored Information (ESI) production to promote “the just, speedy, and inexpensive resolution” of this proceeding in a manner consistent with 37 C.F.R. § 42.1.
2. This Order may be modified for good cause. The parties shall jointly submit any proposed modifications within one month after the initiation date of the proceeding or by the date of the initial conference call, whichever is earlier. If the parties cannot resolve their disagreements regarding these modifications, the parties shall submit their competing proposals and a summary of their dispute within the specified time period.
3. Costs will be shifted for disproportionate ESI production requests. Likewise, a party’s nonresponsive or dilatory discovery tactics will be cost-shifting considerations. *See* 35 U.S.C. §§ 316(a)(6), 326(a)(6).
4. A party’s meaningful compliance with this Order and efforts to promote efficiency and reduce costs will be considered in cost-shifting determinations.

5. Unless otherwise authorized by the Board or agreed to by the parties, any production of ESI pursuant to 37 C.F.R. §§ 42.51 or 42.52 shall not include metadata. However, fields showing the date and time that the document was sent and received, as well as the complete distribution list, shall generally be included in the production if such fields exist.

6. General ESI production under 37 C.F.R. §§ 42.51 and 42.52 (with the exception of routine discovery under § 42.51(b)(1)) shall not include email or other forms of electronic correspondence (collectively “email”). To obtain additional production of email, absent an agreement between the parties to produce, the parties must propound specific email production requests, which requests require prior Board authorization.

7. Email production requests, where authorized by the Board or permitted by agreement of the parties, shall be propounded for specific issues only, rather than general discovery of a party’s products or business.

8. Email production requests, where authorized by the Board or permitted by agreement of the parties, shall be phased to occur after a party’s initial production under 37 C.F.R. § 42.51(b)(1).

9. Where email production requests are authorized by the Board or permitted by agreement of the parties, such requests shall identify the custodian,

search terms, and time frame. The parties shall cooperate to identify proper custodians, proper search terms, and proper time frame.

10. Each requesting party shall limit its email production requests to a total of five custodians per producing party for all such requests. The parties may jointly agree to modify this limit without the Board's leave. The Board shall consider contested requests for up to five additional custodians per producing party, upon showing a need based on the size, complexity, and issues of this specific proceeding.

11. Each party shall limit its email production requests to a total of five search terms per custodian per party. The parties may jointly agree to modify this limit without the Board's leave. The Board shall consider contested requests for up to five additional search terms per custodian, upon showing a need based upon the size, complexity, and issues of this specific proceeding. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such as producing company's name or its product name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g., "computer" and "system") narrows the search and shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g., "computer" or "system") broadens the search, and thus each word or phrase shall count as a

separate search term unless they are variants of the same word. Use of narrowing search criteria (e.g., “and,” “but not,” “w/x”) is encouraged to limit the production, and shall be considered when determining whether to shift costs for disproportionate discovery.

12. The receiving party shall not use ESI that the producing party asserts is attorney-client privileged or work product protected to challenge the privilege or protection.

13. Pursuant to Federal Rule of Evidence 502(b), the inadvertent production of an attorney-client privileged or work product protected ESI is not a waiver of such protection providing the holder of the privilege or protection took reasonable steps to prevent disclosure and the discloser promptly took reasonable steps to rectify the error.

14. Similar to Federal Rule of Evidence 502(d), the mere production of ESI in the proceeding as part of a mass production shall not itself constitute a waiver of privilege for any purpose before the Office.

APPENDIX D: Testimony Guidelines

Introduction

In trials before the Board, uncompelled direct testimony is almost always presented by affidavit or declaration. 37 C.F.R. § 42.53(a). All other testimony (including cross- examination, redirect examination, and compelled direct testimony) occurs by oral examination.

Consistent with the policy expressed in Rule 1 of the Federal Rules of Civil Procedure, and corresponding 37 C.F.R. § 42.1(b), unnecessary objections, “speaking” objections, and coaching of witnesses in proceedings before the Board are strictly prohibited.

Cross-examination testimony should be a question and answer conversation between the examining lawyer and the witness. The defending lawyer must not act as an intermediary, interpreting questions, deciding which questions the witness should answer, and helping the witness formulate answers while testifying.

The testimony guidelines that follow are based on those set forth in the Federal Rules of Civil Procedure, supplemented by the practices followed in several federal district courts.

Examination and cross-examination outside the presence of the Board

1. The examination and cross-examination of a witness proceed as they would in a trial under the Federal Rules of Evidence, except that Rule 103 (Rulings on Evidence) does not apply. After putting the witness under oath or affirmation, the officer must record the testimony by audio, audiovisual, or stenographic means. Testimony must be recorded by the officer personally, or by a person acting in the presence and under direction of the officer.
2. An objection at the time of the examination -- whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the testimony, or any aspect of the testimony -- must be noted on the record, but the examination still proceeds; testimony is taken subject to any such objection.
3. An objection must be stated concisely in a non-argumentative and non-suggestive manner. Counsel must not make objections or statements that suggest an answer to a witness. Objections should be limited to a single word or term. Examples of objections that would be properly stated are: "Objection, form"; "Objection, hearsay"; "Objection, relevance"; and "Objection, foundation."

Examples of objections that would not be proper are: “Objection, I don’t understand the question”; “Objection, vague”; “Objection, take your time answering the question”; and “Objection, look at the document before you answer.” An objecting party must give a clear and concise explanation of an objection if requested by the party taking the testimony or the objection is waived.

4. Counsel may instruct a witness not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the Board, or to present a motion to terminate or limit the testimony.

5. Unless otherwise agreed by the parties or ordered by the Board, the testimony is limited in duration to the times set forth in 37 C.F.R. § 42.53(c). The Board may allow additional time if needed to examine the witness fairly or if the witness, another person, or any other circumstance impedes or delays the examination.

6. Once the cross-examination of a witness has commenced, and until cross-examination of the witness has concluded, counsel offering the witness on direct examination shall not: (a) consult or confer with the witness regarding the substance of the witness’ testimony already given, or anticipated to be given, except for the purpose of conferring on whether to assert a privilege against

testifying or on how to comply with a Board order; or (b) suggest to the witness the manner in which any questions should be answered.

7. An attorney for a witness shall not initiate a private conference with the witness or call for a break in the proceedings while a question is pending, except for the purpose of determining whether a privilege should be asserted.

8. The Board may impose an appropriate sanction -- including the reasonable expenses and attorneys' fees incurred by any party -- on a person who impedes, delays, or frustrates the fair examination of the witness.

9. At any time during the testimony, the witness or a party may move to terminate or limit the testimony on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the witness or party. The witness or party must promptly initiate a conference call with the Board to discuss the proposed motion. 37 C.F.R. § 42.20(b). If the objecting witness or party so demands, the testimony must be suspended for the time necessary to obtain a ruling from the Board, except as the Board may otherwise order.