

From: [Trials](#)
To: [Kushan, Jeffrey P.](#); [Trials](#)
Cc: [Olga A. Partington](#); [Christopher Gallo](#); [Eldora L. Ellison](#); [Katzeff, Lauren](#); [Bhatia, Amit](#); [Arrington, Ethan P.](#); [Maxwell Furigay](#)
Subject: RE: PGR2025-00069, IPR2026-00069 – Request regarding scheduling
Date: Tuesday, May 19, 2026 4:38:43 PM
Attachments: [image001.png](#)
[image002.png](#)

Counsel,

The Board is in the process of aligning the panel members and schedules of PGR2025-00059 and IPR2026-00069, as requested by the parties. In doing so, the panel will also issue an updated scheduling order in both matters that is consistent with the outcome of the pending Motion for Additional Discovery (Paper No. 15). If the panel grants the motion in any part, having considered the Garmin factors as analyzed by the parties, the panel will issue a scheduling order permitting additional time to accommodate production of the discovery granted. This extension may necessitate deposing Dr. Van Brocklin at a later time than proposed below. For this reason, the Board will not consider the issue below until it has ruled on the Motion for Additional Discovery and permitted counsel the opportunity to examine the schedules of the respective parties in light of the ruling on the motion and forthcoming scheduling order, at which time counsel may re-raise this issue.

Regards,

Andrew Kellogg,
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From: Kushan, Jeffrey P. <jkushan@sidley.com>
Sent: Monday, May 18, 2026 2:38 PM
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Subject: PGR2025-00069, IPR2026-00069 – Request regarding scheduling

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Your Honors,

During the May 11 conference call, the question of aligning the schedules of PGR2025-00059 and IPR2026-00069 was raised, given the substantial overlap in issues between the two proceedings.

Since the call, the parties have attempted to negotiate changes to Due Dates 2 and 3 and the date for deposing Patent Owner's expert Dr. VanBrocklin. Unfortunately, the parties have reached an impasse. Patent Owner has represented that the only days Dr. VanBrocklin is available for deposition between now and July 23 are July 21 or 22, and refuses to agree to a stipulated change Due Date 2 (presently July 1 in PGR2025-00059) unless Petitioner accepts one of those two dates. Lead counsel for Petitioner has explained that he has an oral hearing involving 10 unrelated proceedings on July 23, which prevents him from taking Dr. VanBrocklin's deposition on those two dates.

Petitioner believes the impasse could be resolved by shifting the dates of the oral hearing in PGR2025-00059 and IPR2026-00069 to late November, and adjusting Due Dates 2 and 3 to a date that enables Dr. VanBrocklin to be deposed after July 23. Shifting the oral hearing date as proposed would involve moving the oral hearing in PGR2025-00059 back by approximately one month, and the oral hearing in IPR2026-00069 forward by approximately one month.

Petitioner thus requests that the Board adjust Due Date 8 in both proceedings to a date compatible with the Board's availability in late November or early December, and direct the parties to adjust Due Dates 2 and 3 to dates compatible with Dr. VanBrocklin being deposed after July 23, 2026.

Patent Owner's Position

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While Patent Owner agrees that aligning the schedules of PGR2025-00059 and IPR2026-00069 would be prudent, Petitioner fails to justify its efforts to delay Dr. VanBrocklin's deposition beyond July 21 or 22, and Petitioner fails to justify holding a combined hearing any later than the October 14, 2026 date already set in PGR2025-00059.

Regarding the proffered dates for Dr. VanBrocklin's deposition, Patent Owner previously offered Dr. VanBrocklin for deposition on May 18, but Petitioner rejected that date and offered no workable alternative. More recently, on May 14, Patent Owner offered July 21 or 22 for

deposition, as these are the only dates the witness is available during the time period Petitioner requested. Petitioner again rejected the proffered dates even though its counsel does not have an actual scheduling conflict, such as a conflicting hearing or a previously scheduled deposition. Rather, Petitioner's lead counsel rejected the proffered dates simply because the dates are not **convenient** for him.

Petitioner's argument that its lead counsel must prepare for a July 23rd hearing does not warrant rejecting July 21 or 22 for deposition and shifting the trial schedule. Petitioner has more than 10 weeks from now to prepare for Dr. VanBrocklin's deposition and the hearing in the other cases. Although Petitioner's lead counsel is supported by experienced back-up counsel who is not of record in the other proceedings, Petitioner fails to explain why his teams cannot manage to handle a deposition and a hearing in the same week. Coincidentally, Patent Owner's lead counsel is also lead counsel in the very same proceedings with the July 23rd hearing, yet Patent Owner can manage to handle both matters. Moreover, the July 23rd hearing is a follow-on to related PGRs that were argued earlier this year, and Petitioner's lead counsel is supported by even more backup counsel in the other proceedings, thus lightening any preparation burden. Under these circumstances, there is no justifiable basis to reject July 21 or 22 for Dr. VanBrocklin's deposition or to subject the parties to further delay of this case's trial schedule.

Under these circumstances, Patent Owner thus requests that the Board direct Petitioner to accept July 21 or 22 for Dr. VanBrocklin's deposition if it intends to depose him. Patent Owner has previously indicated to Petitioner that if it accepts one of these dates for deposition, Patent Owner is willing to move DD2 in PGR2025-00059 from July 1 to July 31 and DD3 from August 12 to September 18.

Conference call

The parties defer to the Panel as to whether they wish to have a conference call regarding this request. If a conference call is desired, the parties will provide dates and times at which both parties are available.

Sincerely,

Jeff Kushan

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