

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

ZODIAC POOL SYSTEMS, INC.  
Petitioner

v.

AQUA PRODUCTS, INC.  
Patent Owner

---

Case No. IPR2013-00159  
Patent 8,273,183 B2

---

Before BRIAN J. MCNAMARA, RAMA G. ELLURU, and JAMES B. ARPIN,  
*Administrative Patent Judges.*

McNAMARA, *Administrative Patent Judge.*

DECISION AUTHORIZING PATENT OWNER TO FILE SUPPLEMENTAL  
INFORMATION AND GRANTING JOINT MOTION TO AMEND THE  
SCHEDULING ORDER

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

Authorization to File Supplemental Information

On March 19, 2014, Judges McNamara, Elluru, and Arpin held a teleconference with the parties to discuss Patent Owner's concerns about statements made in the Declaration of Keith McQueen ("McQueen Declaration"; Ex. 1009) in support of positions relating to objective criteria of non-obviousness articulated in Petitioner's Reply (Paper 44), filed on March 10, 2014, to the Patent Owners Response (Paper 28), filed November 25, 2013. Patent Owner noted that Petitioner's Reply, typed in 12 point font, effectively exceeds the page limit for such a reply and that Patent Owner, who had previously been denied discovery on related issues, Decision entered on October 18, 2013 (Paper 26), has no opportunity to respond to potentially inaccurate statements in the McQueen Declaration. At the conclusion of the teleconference, we instructed Petitioner and Patent Owner to discuss further document production. We further instructed Patent Owner to seek authorization to file supplemental information, should Patent Owner's review of the additional documentation warrant such a request.

On March 23, 2014, Patent Owner sent an e-mail communication to us requesting permission to file a five-page "sur-reply" based on Patent Owner's review of documentation produced by Petitioner on March 21, 2014. In its e-mail request for authorization to file a "sur-reply", Patent Owner asserts that the documentation that it received from Petitioner concerns Petitioner's prior knowledge and copying of Patent Owner's jet driven, pool cleaners and is evidence that supports Patent Owner's contention that the technology disclosed in the patent that is the subject of this proceeding was commercially successful.

Having already discussed the issue with the parties in our teleconference on March 19, 2014, and in view of the circumstances and the current schedule, Patent Owner is authorized to file a total of 5 pages of reply and supplemental

information directed solely to rebutting allegations made in the McQueen Declaration concerning objective criteria of non-obviousness. Patent Owner must file any such reply and supplemental information not later than DUE DATE 3 of the Scheduling Order, as amended herein. We anticipate that no further briefing will be needed from either party on this issue.

Amendment of Scheduling Order

During the teleconference on March 19, 2014, we also authorized the parties to consult with each other concerning the current Scheduling Order and to file a Joint Motion to Amend Due Dates 3-6 of the Scheduling Quarter. We did not authorize the parties to move to amend the date of the oral hearing (DUE DATE 7). The parties filed such a Joint Motion on March 20, 2014, and that motion is granted.

In consideration of the foregoing, it is

ORDERED that Patent Owner is authorized to file up to a total of 5 pages of reply and supplemental information, directed solely to rebutting allegations made in the McQueen Declaration concerning objective criteria of nonobvious, not later than DUE DATE 3 of the Scheduling Order, as amended herein; and

FURTHER ORDERED that the Joint Motion to Amend DUE DATES 3, 4, 5, and 6 of the Scheduling Order is GRANTED. The oral hearing (DUE DATE 7) remains scheduled to take place on May 20, 2014.

Case IPR2013-00159

Patent 8,273,183 B2

**PETITIONER:**

John A. Hankins

Eric R. Garcia

McDERMOTT, WILL & EMERY LLP

[jhankins@mwe.com](mailto:jhankins@mwe.com)

[ergarcia@mwe.com](mailto:ergarcia@mwe.com)

**PATENT OWNER:**

Jeffrey A. Schwab

Richard L. Crisona

ABELMAN, FRAYNE & SCHWAB

[jaschwab@lawabel.com](mailto:jaschwab@lawabel.com)

[rlcrisona@lawabel.com](mailto:rlcrisona@lawabel.com)