

plus-function limitation in the form permitted under 35 U.S.C. 112(6), file an annotated copy of the claim indicating in bold face between braces ({} the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function.

(c) Any motion to add or amend a claim must include:

- (1) A clean copy of the claim,
- (2) A claim chart showing where the disclosure of the patent or application provides written description of the subject matter of the claim, and
- (3) Where applicable, a copy of the claims annotated according to paragraph (b) of this section.

§ 41.120 Notice of basis for relief.

(a) The Board may require a party to provide a notice stating the relief it requests and the basis for its entitlement to relief. The Board may provide for the notice to be maintained in confidence for a limited time.

(b) *Effect.* If a notice under paragraph (a) of this section is required, a party will be limited to filing substantive motions consistent with the notice. Ambiguities in the notice will be construed against the party. A notice is not evidence except as an admission by a party-opponent.

(c) *Correction.* A party may move to correct its notice. The motion should be filed promptly after the party becomes aware of the basis for the correction. A correction filed after the time set for filing notices will only be entered if entry would serve the interests of justice.

§ 41.121 Motions.

(a) *Types of motions*—(1) *Substantive motions.* Consistent with the notice of requested relief, if any, and to the extent the Board authorizes, a party may file a motion:

- (i) To redefine the scope of the contested case,
- (ii) To change benefit accorded for the contested subject matter, or
- (iii) For judgment in the contested case.

(2) *Responsive motions.* The Board may authorize a party to file a motion to amend or add a claim, to change inventorship, or otherwise to cure a de-

fect raised in a notice of requested relief or in a substantive motion.

(3) *Miscellaneous motions.* Any request for relief other than a substantive or responsive motion must be filed as a miscellaneous motion.

(b) *Burden of proof.* The party filing the motion has the burden of proof to establish that it is entitled to the requested relief.

(c) *Content of motions; oppositions and replies.* (1) Each motion must be filed as a separate paper and must include:

- (i) A statement of the precise relief requested,
- (ii) A statement of material facts (see paragraph (d) of this section), and
- (iii) A full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence and the governing law, rules, and precedent.

(2) *Compliance with rules.* Where a rule in part 1 of this title ordinarily governs the relief sought, the motion must make any showings required under that rule in addition to any showings required in this part.

(3) The Board may order additional showings or explanations as a condition for filing a motion.

(d) *Statement of material facts.* (1) Each material fact shall be set forth as a separate numbered sentence with specific citations to the portions of the record that support the fact.

(2) The Board may require that the statement of material facts be submitted as a separate paper.

(e) *Claim charts.* Claim charts must be used in support of any paper requiring the comparison of a claim to something else, such as another claim, prior art, or a specification. Claim charts must accompany the paper as an appendix. Claim charts are not a substitute for appropriate argument and explanation in the paper.

(f) The Board may order briefing on any issue that could be raised by motion.

§ 41.122 Oppositions and replies.

(a) Oppositions and replies must comply with the content requirements for motions and must include a statement identifying material facts in dispute. Any material fact not specifically denied shall be considered admitted.

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(b) All arguments for the relief requested in a motion must be made in the motion. A reply may only respond to arguments raised in the corresponding opposition.

§ 41.123 Default filing times.

(a) A *motion*, other than a miscellaneous motion, may only be filed according to a schedule the Board sets. The default times for acting are:

(1) An *opposition* is due 30 days after service of the motion.

(2) A *reply* is due 30 days after service of the opposition.

(3) A *responsive motion* is due 30 days after the service of the motion.

(b) *Miscellaneous motions.* (1) If no time for filing a specific miscellaneous motion is provided in this part or in a Board order:

(i) The opposing party must be consulted prior to filing the miscellaneous motion, and

(ii) If an opposing party plans to oppose the miscellaneous motion, the movant may not file the motion without Board authorization. Such authorization should ordinarily be obtained through a telephone conference including the Board and every other party to the proceeding. Delay in seeking relief may justify a denial of the motion.

(2) An opposition may not be filed without authorization. The default times for acting are:

(i) An *opposition* to a miscellaneous motion is due five business days after service of the motion.

(ii) A *reply* to a miscellaneous motion opposition is due three business days after service of the opposition.

(c) *Exhibits.* Each exhibit must be filed and served with the first paper in which it is cited except as the Board may otherwise order.

§ 41.124 Oral argument.

(a) *Request for oral argument.* A party may request an oral argument on an issue raised in a paper within five business days of the filing of the paper. The request must be filed as a separate paper and must specify the issues to be considered.

(b) *Copies for panel.* If an oral argument is set for a panel, the movant on any issue to be argued must provide three working copies of the motion, the

opposition, and the reply. Each party is responsible for providing three working copies of its exhibits relating to the motion.

(c) *Length of argument.* If a request for oral argument is granted, each party will have a total of 20 minutes to present its arguments, including any time for rebuttal.

(d) *Demonstrative exhibits* must be served at least five business days before the oral argument and filed no later than the time of the oral argument.

(e) *Transcription.* The Board encourages the use of a transcription service at oral arguments but, if such a service is to be used, the Board must be notified in advance to ensure adequate facilities are available and a transcript must be filed with the Board promptly after the oral argument.

§ 41.125 Decision on motions.

(a) *Order of consideration.* The Board may take up motions for decisions in any order, may grant, deny, or dismiss any motion, and may take such other action appropriate to secure the just, speedy, and inexpensive determination of the proceeding. A decision on a motion may include deferral of action on an issue until a later point in the proceeding.

(b) *Interlocutory decisions.* A decision on motions without a judgment is not final for the purposes of judicial review. A panel decision on an issue will govern further proceedings in the contested case.

(c) *Rehearing—(1) Time for request.* A request for rehearing of a decision on a motion must be filed within fourteen days of the decision.

(2) *No tolling.* The filing of a request for rehearing does not toll times for taking action.

(3) *Burden on rehearing.* The burden of showing a decision should be modified lies with the party attacking the decision. The request must specifically identify:

(i) All matters the party believes to have been misapprehended or overlooked, and

(ii) The place where the matter was previously addressed in a motion, opposition, or reply.