

§ 41.128

the party believes to have been misapprehended or overlooked, and the place where the matter was previously addressed in a motion, opposition, or reply.

[69 FR 50003, Aug. 12, 2004, as amended at 69 FR 58260, Sept. 30, 2004]

§ 41.128 Sanctions.

(a) The Board may impose a sanction against a party for misconduct, including:

(1) Failure to comply with an applicable rule or order in the proceeding;

(2) Advancing a misleading or frivolous request for relief or argument; or

(3) Engaging in dilatory tactics.

(b) Sanctions include entry of:

(1) An order holding certain facts to have been established in the proceeding;

(2) An order expunging, or precluding a party from filing, a paper;

(3) An order precluding a party from presenting or contesting a particular issue;

(4) An order precluding a party from requesting, obtaining, or opposing discovery;

(5) An order excluding evidence;

(6) An order awarding compensatory expenses, including attorney fees;

(7) An order requiring terminal disclaimer of patent term; or

(8) Judgment in the contested case.

§ 41.150 Discovery.

(a) *Limited discovery.* A party is not entitled to discovery except as authorized in this subpart. The parties may agree to discovery among themselves at any time.

(b) *Automatic discovery.* (1) Within 21 days of a request by an opposing party, a party must:

(i) Serve a legible copy of every requested patent, patent application, literature reference, and test standard mentioned in the specification of the party's involved patent or application, or application upon which the party will rely for benefit, and, if the requested material is in a language other than English, a translation, if available, and

(ii) File with the Board a notice (without copies of the requested materials) of service of the requested materials.

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(2) Unless previously served, or the Board orders otherwise, any exhibit cited in a motion or in testimony must be served with the citing motion or testimony.

(c) *Additional discovery.* (1) A party may request additional discovery. The requesting party must show that such additional discovery is in the interests of justice. The Board may specify conditions for such additional discovery.

(2) When appropriate, a party may obtain production of documents and things during cross examination of an opponent's witness or during testimony authorized under § 41.156.

§ 41.151 Admissibility.

Evidence that is not taken, sought, or filed in accordance with this subpart shall not be admissible.

§ 41.152 Applicability of the Federal Rules of Evidence.

(a) *Generally.* Except as otherwise provided in this subpart, the Federal Rules of Evidence shall apply to contested cases.

(b) *Exclusions.* Those portions of the Federal Rules of Evidence relating to criminal proceedings, juries, and other matters not relevant to proceedings under this subpart shall not apply.

(c) *Modifications in terminology.* Unless otherwise clear from context, the following terms of the Federal Rules of Evidence shall be construed as indicated:

Appellate court means United States Court of Appeals for the Federal Circuit or a United States district court when judicial review is under 35 U.S.C. 146.

Civil action, civil proceeding, action, and trial mean contested case.

Courts of the United States, U.S. Magistrate, court, trial court, and trier of fact mean Board.

Hearing means:

(i) In Federal Rule of Evidence 703, the time when the expert testifies.

(ii) In Federal Rule of Evidence 804(a)(5), the time for taking testimony.

Judge means the Board.

Judicial notice means official notice.

Trial or hearing means, in Federal Rule of Evidence 807, the time for taking testimony.