

filing a motion to amend in paragraph (a)(1)(i) of this section.

(d) *Burden of persuasion.* On any motion to amend:

(1) *Patent owner's burden.* A patent owner bears the burden of persuasion to show, by a preponderance of the evidence, that the motion to amend complies with the requirements of paragraphs (1) and (3) of 35 U.S.C. 326(d), as well as paragraphs (a)(2) and (3) and (b)(1) and (2) of this section;

(2) *Petitioner's burden.* A petitioner bears the burden of persuasion to show, by a preponderance of the evidence, that any proposed substitute claims are unpatentable; and

(3) *Exercise of Board discretion.* Irrespective of paragraphs (d)(1) and (2) of this section, the Board may exercise its discretion to grant or deny a motion to amend or raise a new ground of unpatentability in connection with a proposed substitute claim. Where the Board exercises its discretion to raise a new ground of unpatentability in connection with a proposed substitute claim, the parties will have notice and an opportunity to respond. In the exercise of discretion under this paragraph (d)(3), the Board may consider all evidence of record in the proceeding. The Board also may consider and may make of record:

(i) Any evidence in a related proceeding before the Office and evidence that a district court can judicially notice; and

(ii) When no petitioner opposes or all petitioners cease to oppose a motion to amend, prior art identified through a prior art search conducted by the Office at the Board's request. A request for and result of a prior art search conducted by the Office at the Board's request will be made of record.

(4) *Determination of unpatentability.* Where the Board exercises its discretion under paragraph (d)(3) of this section, the Board must determine unpatentability based on a preponderance of the evidence of record or made of record.

(e) *Preliminary guidance.* (1) In its original motion to amend, a patent owner may request that the Board provide preliminary guidance setting forth the Board's initial, preliminary views on the original motion to amend, including whether the parties have shown a reasonable likelihood of meeting their respective burdens of persuasion as set forth under paragraphs

(d)(1) and (2) of this section and notice of any new ground of unpatentability discretionarily raised by the Board under paragraph (d)(3) of this section. The Board may, upon issuing the preliminary guidance, determine whether to extend the final written decision more than one year from the date a trial is instituted in accordance with § 42.200(c) and whether to extend any remaining deadlines under § 42.5(c)(2).

(2) Any preliminary guidance provided by the Board on an original motion to amend will not be binding on the Board in any subsequent decision in the proceeding, is not a "decision" under § 42.71(d) that may be the subject of a request for rehearing, and is not a final agency action.

(3) In response to the Board's preliminary guidance, a patent owner may file a reply to the petitioner's opposition to the motion to amend, preliminary guidance (no opposition is filed), or a revised motion to amend as discussed in paragraph (f) of this section. The reply or revised motion to amend may be accompanied by new evidence. If a patent owner does not file either a reply or a revised motion to amend after receiving preliminary guidance from the Board, the petitioner may file a reply to the preliminary guidance, but such a reply may only respond to the preliminary guidance and may not be accompanied by new evidence. If the petitioner files a reply in this context, a patent owner may file a sur-reply, but that sur-reply may only respond to the petitioner's reply and may not be accompanied by new evidence.

(f) *Revised motion to amend.* (1) Irrespective of paragraph (c) of this section, a patent owner may, without prior authorization from the Board, file one revised motion to amend after receiving an opposition to the original motion to amend or after receiving the Board's preliminary guidance. The Board may, upon receiving the revised motion to amend, determine whether to extend the final written decision more than one year from the date a trial is instituted in accordance with § 42.200(c) and whether to extend any remaining deadlines under § 42.5(c)(2).

(2) A revised motion to amend must be responsive to issues raised in the preliminary guidance, if requested, or in the petitioner's opposition to the motion to amend, and must include one or more

new proposed substitute claims in place of the previously presented substitute claims, where each new proposed substitute claim presents a new claim amendment.

(3) If a patent owner files a revised motion to amend, that revised motion to amend replaces the original motion to amend in the proceeding.

**Katherine K. Vidal,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 15

[ET Docket No. 18-295 and GN Docket No. 17-183; FCC 23-86; FR ID 192755]

### Unlicensed Use of the 6 GHz Band; and Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Federal Communications Commission is correcting the docket numbers for commenters under the preamble section titled, **ADDRESSES**, of the proposed rule that appeared in the **Federal Register** on February 26, 2024.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Oros of the Office of Engineering and Technology, at [Nicholas.Oros@fcc.gov](mailto:Nicholas.Oros@fcc.gov) or 202-418-0636.

**SUPPLEMENTARY INFORMATION:**

**Correction**

In FR Doc. 2023-28620 in the **Federal Register** of February 26, 2024, the following correction is made: On page 14016 in the first column and first sentence in **ADDRESSES** of the preamble, "ET Docket No. 13-115 and RM-11341" is corrected to read "ET Docket No. 18-295 and GN Docket No. 17-183".

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

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