Filed on behalf of the Petitioner
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Paper No._____
Date Filed: July 23, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PERSEPHONE, GMBH
U.S. Application No. 15/368,221
Petitioner

v.

SIMON TECHNOLOGIES LLC
U.S. Application No. 14/726,075
Respondent

Case DER2017-00004

PETITION UNDER 37 CFR §§ 1.182 AND 1.183 TO ACCEPT PETITIONER'S SUGGESTION TO ADD A PATENT TO A DERIVATION PROCEEDING UNDER 37 CFR §42.408

Mail Stop Office of Petitions
Patent Trial and Appeal Board
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This petition is submitted by Requester Persephone GmbH (hereinafter "Requester" or "Persephone") for excusable delay under 37 CFR §§ 1.182 and 1.183 to accept Petitioner's Suggestion to Add a Patent to a Derivation Proceeding under 37 CFR §42.408 (hereinafter "Petitioner's Suggestion").

Please charge our Deposit Account No. 03-0075 $84.00 to cover the fee set forth in 37 CFR § 1.17(f). The Director is authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 03-0075.

STATEMENT OF THE FACTS

- On December 02, 2016, Persephone petitioned the Patent Trial and Appeal Board to institute derivation proceedings relating to claims 1-16 in United States Patent Application No. 14/726,075 ("the Broder Application") published on December 3, 2015 under publication number US 2015/0348192 A1, naming Jason Broder as inventor.

- On December 12, 2016, the USPTO accorded derivation proceeding designated Case DER2017-00004 the filing date of December 2, 2016.

- On July 18, 2024, Persephone filed a Petitioner's Suggestion to Add a Patent to Derivation Proceeding Case DER2017-00004 under 37 CFR §42.408.

REQUESTER'S PETITION TO ACCEPT PETITIONER'S SUGGESTION

To the extent required by the Rules, Requester, hereby petitions, pursuant to 37 C.F.R. §§ 1.182 and 1.183, for waiver of any applicable rules which might prohibit entry of this Suggestion, such that the Patent Trial and Appeal Board consider the Petitioner's Suggestion, filed July 17, 2024 by Requester. The Petitioner's Suggestion seeks to add United States Patent Application Serial No. 18/092,863 ("the '863 Application") to the above-identified derivation proceeding. The Petitioner's Suggestion could not have been made in the original petition because United States Patent Application No. 18/092,863, which was published as United States Patent Application Publication No. US 2023/0214923 A1, was filed on January 3, 2023. The

above- identified derivation proceeding was filed on December 2, 2016. Further, the '863 Application was first published on July 6, 2023.

37 C.F.R. § 42.403 allows the filing of a suggestion for adding a patent application to a derivation proceeding within the one-year period beginning on the date of the first publication of a claim to an invention that is the same or substantially the same as the earlier application's claim to the allegedly derived invention. Persephone requests excuse for the delay to file the Suggestion due to the Requester's medical condition, which renders the Requester (i.e. Christian Guenther, sole officer of Persephone, who suffers from seizures and chronic pain in his left foot and left shoulder) unable to work. Persephone intended to file the Petitioner's Suggestion in the above-referenced Derivation Proceeding. Due to severe medical issues, Requester was unable to submit the document on time.

Requester attached supporting evidence demonstrating the excusable delay. An attached Medical Certificate dated June 11, 2024 is written in German. Via Google German to English translation, it states:

"Gunther, Christian, born on December 23, 1985
Medical certificate
The patient mentioned above is currently 100% unable to work."

Also attached is an Exit Report from the Basel University Hospital dated June 25, 2024. The Report confirms that Christian Guenther of Persephone suffered a tonic-clonic seizure on June 18, 2024. From a Google German to English translation of the Exit Report (Page 1 under section heading "Diagnosen:" and Page 2 under section heading "Jetziges Leiden:"), passers-by reported that he fell from a standing position and had tonic/clonic convulsions. He was picked up by an ambulance and admitted in the emergency room at the Basel Hospital, where he stayed for a week before returning home to continue his recovery.

Unless suspension of the rules to permit entry of the present Suggestion is granted under § 1.183, Requester will have no opportunity to be heard before the USPTO regarding the true inventorship of the '863 Application. Such waiver manifestly is necessary and proper to afford any opportunity for Requester to be heard on the issues raised in the Suggestion and prevent fraud to the USPTO via Applicant of the '863 Application conducting inequitable conduct regarding derivation of the invention claimed in the '863 Application.

RELIEF REQUESTED

Persephone respectfully request that the USPTO PTAB accept and consider the excusably delayed Petitioner's Suggestion to Add a Patent to Derivation Proceeding Case DER2017-00004 under 37 CFR §42.408.

CONCLUSION

If necessary, the Commissioner is hereby authorized in this, concurrent, and future papers, to charge payment or credit any overpayment to Deposit Account No. 03-0075 for any additional required fees.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.

July 23, 2024

Please charge or credit our Account No. 03-0075 as necessary to effect entry and/or ensure consideration of this submission.

By /Michael J. Cornelison/
Michael J. Cornelison
Registration No. 40,395
Customer No. 03000
(215) 567-2010
Attorneys for Requester

CERTIFICATE OF MAILING/TRANSMISSION PURSUANT TO 37 CFR 1.8
I hereby certify that this correspondence and any attachments referenced therein is/are being mailed/transmitted to the USPTO, Patent Trial and Appeal Board on the date shown below.

Date: July 23, 2024 Signature: /Michael J. Cornelison/

Name: Michael J. Cornelison

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing PETITION UNDER 37 CFR §§ 1.182 AND 1.183 TO ACCEPT PETITIONER'S SUGGESTION TO ADD A PATENT TO A DERIVATION PROCEEDING UNDER 37 CFR §42.408, including all accompanying documents, was served by First Class Mail on July 23, 2024 to:

Neil G. Ferrari	nferrari@munckwilson.com
Jordan C. Strauss	jstrauss@munckwilson.com

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.

July 23, 2024

By /Michael J. Cornelison/
Michael J. Cornelison
Registration No. 40,395
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Attorneys for Requester