

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

FINTIV, INC.,
Patent Owner.

IPR2023-00398 (Patent 10,438,196 B2)
IPR2023-00399 (Patent 9,208,488 B2)¹

Before MICHAEL R. ZECHER, GEORGE R. HOSKINS, and
JULIET MITCHELL DIRBA, *Administrative Patent Judges*.

PER CURIAM.

ORDER

Denying and Expunging Joint Motions for Extension of Time; and
Requiring a Power of Attorney from Patent Owner
37 C.F.R. §§ 42.5(a), 42.10(b)

¹ This Order is being filed in each proceeding listed in the caption. The parties are not authorized to use this style of heading.

On August 29, 2023, Patent Owner, Fintiv, Inc., filed a Joint Motion for Extension of Time, and Patent Owner’s Updated Mandatory Notices, in each of these two proceedings. *See, e.g.*, IPR2023-00398, Paper 12 (“Mot.”), Paper 11 (“PO Notices”).² We discuss each filing in turn.

I. JOINT MOTIONS FOR EXTENSION OF TIME

The Joint Motions seek to extend Due Dates 1, 2, and 3 in the combined Scheduling Order for these two proceedings, each by 14 days. *See* Mot. 1; Paper 10 (Scheduling Order).

However, the parties did not receive authorization from the Board prior to filing the Joint Motions. “A motion will not be entered without Board authorization,” which may be “provided in an order of general applicability or during the proceeding.” 37 C.F.R. § 42.20(b); *see also* PTAB Consolidated Trial Practice Guide (Nov. 2019)³, 37–38. As a result, the Joint Motions are *denied*, and they are hereby expunged from the record. *See* 37 C.F.R. § 42.7(a).

We further take this opportunity to note that the Scheduling Order authorizes the parties to stipulate to different dates for Due Date 1 and portions of Due Dates 2 and 3, within certain limits. *See* Paper 10, at 8–9. It is not clear from the Joint Motion whether the desired 14-day extension can be achieved via a stipulation falling within the limits set forth in the Scheduling Order. If not, then the parties may contact the Board by email to request authorization to renew the Joint Motions. Going forward, counsel

² For expediency, this Order cites to papers filed in IPR2023-00398, unless noted otherwise. Similar papers were also filed in IPR2023-00399.

³ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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are expected to be familiar with the content of the Board's Orders in these proceedings, and to address those Orders when seeking relief from them.

II. PATENT OWNER'S UPDATED MANDATORY NOTICES

Patent Owner's Updated Mandatory Notices would change counsel representing Patent Owner in these proceedings. Specifically, prior to the update, Patent Owner's lead counsel was Jonathan Waldrop and sole backup counsel was John Downing, both of Kasowitz Benson Torres LLP. *See* Papers 4–5. After the update, Patent Owner's lead counsel would be Brandon Theiss, with backup counsel being Mr. Waldrop, Mr. Downing, and Daniel Golub. *See* PO Notices, 1. Mr. Theiss and Mr. Golub are both from the Volpe Koenig firm. *See id.*

However, Patent Owner's Updated Mandatory Notices were not accompanied by a Power of Attorney. "A power of attorney must be filed with the designation of counsel, except the patent owner should not file an additional power of attorney if the designated counsel is already counsel of record in the subject patent." 37 C.F.R. § 42.10(b). So far as we can tell, Patent Owner's newly designated counsel are not already counsel of record in the subject patents. *Cf.* Paper 5 (identifying only Mr. Waldrop and Mr. Downing in Patent Owner's Power of Attorney). Therefore, in order for Mr. Theiss and Mr. Golub to represent Patent Owner in these proceedings, an appropriate Power of Attorney must be entered into the record of each proceeding.

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III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Joint Motions for Extension of Time (IPR2023-00398, Paper 12; IPR2023-00399, Paper 12) are both *denied* and, pursuant to 37 C.F.R. § 42.7(a), they are expunged from the record; and

FURTHER ORDERED that, in order for Mr. Theiss and Mr. Golub to represent Patent Owner in these proceedings, an appropriate Power of Attorney must be entered into the record of each proceeding.

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