

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MISSION INTEGRATED TECHNOLOGIES, LLC
Petitioner

v.

JOSHUA CLEMENTE
Patent Owner

IPR2023-01285
Patent 11,174,677

Before BARRY L. GROSSMAN, MATTHEW S. MEYERS,
and ARTHUR M. PESLAK, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

ORDER TO SHOW CAUSE
37 C.F.R. § 42.5

This Order was prompted by Petitioner's email, sent on December 13, 2023, to the Board seeking authorization to file a Preliminary Reply addressing the Real Party of Interest comments made in the Patent Owner's Preliminary Response. *See* Ex. 3001 (Petitioner's email to the Board dated Dec. 13, 2023).

IPR or CBM [number]
Patent [number]

The record indicates that Thomas E. Brown (Reg. No. 44,450) filed a Petition in this proceeding on behalf of the sole named Petitioner, “Mission Integrated Technologies, LLC” (“MIT”). *See* Paper 1. Mr. Brown filed the Petition as “Lead Counsel for Petitioner.” *Id.* at 56. Andrew G. Melick (Reg. No. 56,868) is named as “Back-up Counsel for Petitioner.” *Id.* Both Mr. Brown and Mr. Melick are affiliated with “WHDA, LLP.” *Id.* Neither Mr. Brown nor Mr. Melick, however, have filed a Power of Attorney authorizing them, individually or collectively, to represent MIT in this matter.

Accordingly, Mr. Brown and Mr. Melick, individually or collectively, are required to show cause as to why the Petition should not be dismissed and all papers related to the Petition expunged from our files because it appears to have been filed without a valid Power of Attorney from MIT.

The following additional facts are pertinent to this matter.

A Petition (Paper 1) was filed on August 7, 2023, with MIT as the named Petitioner, and with Mr. Brown and Mr. Melick named as counsel for MIT, as stated above.

A Power of Attorney also was filed on August 7, 2023. Paper 3. The Power of Attorney is titled ‘**Power of Attorney**.’ *Id.* The Power of Attorney is a single page and states the following in its entirety:

I, Fahmi Alubbad, of 1934 Old Gallows Rd, Vienna, Va 22182, hereby appoint Thomas E. Brown, of WHDA at 8500 Leesburg Pike, Tyson, VA 22182, *as my attorney-in-fact to act on my behalf* in all matters relating to the following intellectual property rights (IPRs):

- IPR 2023-01285

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My attorney-in-fact is authorized to do all acts and things necessary or advisable in connection with the IPRs, including but not limited to:

- Filing and prosecuting applications for IPRs;
- Negotiating and executing licenses and agreements relating to the IPRs;

In witness whereof, I have executed this power of attorney on August 7, 2023.

(Digitally Signed)

Fahmi Alubbad

Witness:

Noel D. Matchett

Paper 3 (emphasis added). Thus, it is clear from this Power of Attorney that Mr. Brown has been appointed by Fahmi Alubbad to represent Fahmi Alubbad as an individual (“appoint . . . as my attorney-in-fact to act on my behalf”). Mr. Brown, however, has not been appointed to represent MIT.

Moreover, the appointment is specific to Mr. Brown and does not include any other person affiliated in any way with “WHDA.”¹ There is

¹ A typical Power of Attorney, which appoints several attorneys from the same law firm would state something like: “Petitioner hereby appoints the practitioners associated with XYZ law firm, Customer Number 12,345, including the following lead and backup counsel, as its attorneys to transact all business in the United States Patent & Trademark Office associated with the *inter partes* reviews involving U.S. Patent No. 1,234,567.” The person signing this Power of Attorney also should state something like: “The undersigned individual is authorized to execute this Power of Attorney on behalf of Petitioner.”

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nothing in our records showing that Mr. Melick has been appointed as counsel to represent Fahmi Alubbad or MIT.

We are aware that a Declaration by Fahmi Alubbad has been submitted in this proceeding stating “I have worked at Mission Integrated Technologies, LLC (“MIT”) (and its predecessor company Assault Rescue Elevated System, LLC) as an Owner Representative. My responsibilities have generally included marketing and sales activities.” Ex. 1004 ¶ 1. This statement does not establish that Fahmi Alubbad has the authority to appoint counsel to represent MIT. Moreover, the Alubbad Declaration acknowledges that “MIT’s President” is “Tim Clemente.” *Id.* at ¶ 3.

We also are aware that “Timothy G. Clemente, President, Mission Integrated Technologies” submitted a Declaration stating that “I, and I alone, have the authority to act as an officer of the company [MIT].” Ex. 2001, 1. Mr. Clemente also testifies:

This IPR action was in fact not initiated by Mission Integrated Technologies, the entity I am proudly the President of, but rather is being perpetrated by one of the company’s investors as part of a conspiracy to avoid compensating the inventor and patent holder of the ARES system, Joshua Clemente.

I wish to state unequivocally, that Mr. Alubbad has neither the authority nor the intimate knowledge to purport to represent MIT in this process.

Id. Thus, it appears that Mr. Alubbad and MIT are adverse parties that would preclude Mr. Brown, who is Mr. Alubbad’s counsel, from representing MIT in this matter.

Under 37 C.F.R. § 42.12(a), the Board may impose a sanction against a party for misconduct, including . . . “(7) Any . . . improper use of the

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proceeding, including actions that harass or cause unnecessary delay or an unnecessary increase in the cost of the proceeding.”

Under 37 C.F.R. § 42.12(b), sanctions may include . . . “An order expunging or precluding a party from filing a paper [(b)(2)]; . . . An order providing for compensatory expenses [(b)(6)] . . . and/or Judgment in the trial or dismissal of the petition [(b)(8)].”

CONCLUSION

Based on the Power of Attorney (Paper 3) in this proceeding submitted on behalf of the “Petitioner,” and other papers as discussed above, it appears that Mr. Brown does not represent the named Petitioner MIT, and may be adverse to MIT. Mr. Melick has not been appointed by any named party to represent them.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, Mr. Brown and Mr. Melick, individually or collectively, shall file on or before December 27, 2023 a paper not to exceed five (5) pages stating why the Petition in this proceeding should not be dismissed and all papers expunged because neither Mr. Brown nor Mr. Melick has been appointed to represent the named Petitioner, Mission Integrated Technologies, LLC; and

FURTHER ORDERED that, Patent Owner, may, but is not required to, file a response on or before January 3, 2024, not to exceed five pages responding to papers filed by Mr. Brown and/or Mr. Melick.

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FOR PETITIONER:

Thomas Brown
tbrown@whda.com

Andrew Melick
amelick@whda.com

FOR PATENT OWNER:

Joshua Clemente
Joshua.clemente@gmail.com