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Subject: IPR2023-01372 - Conference Request for Motions for Sanctions by Parties
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Dear Honorable Board,

I am lead counsel for Petitioner Omega Liner Company, Inc. in the above-captioned matter (IPR2023-01372). Petitioner and Patent Owner request a conference call with the Board to seek authorization to file their respective motions for sanctions, as outlined in the below statements:

Petitioner's Statement

Petitioner has satisfied the 21-day safe harbor requirement under 37 C.F.R. § 42.11(d)(2) and seeks authorization to file a motion for sanctions against Patent Owner for violating its Duty of Candor & Good Faith under Rule 42.11(a) and withholding inconsistent information in violation of Rule 42.51(b)(1)(iii). Patent Owner submitted knowingly false testimony (EX2001, EX2003, EX2004) to the Board, including (1) falsely denying any knowledge of film adhesion problems prior to the spring of 2012, (2) falsely claiming examples B4, B5, and B6 in the specification had 1%, 4%, and 6% "migrating compound" (wax) added, and (3) falsely asserting Constab® PE-SA 270 consisted entirely of "migrating compound" (wax) despite it being primarily composed of non-migrating compounds (polyethylene and calcium carbonate).

Patent Owner also attempted to coerce lead inventor Dr. Kurt Stark into signing a false declaration by threatening litigation and "damages" and demanding his signature within three business days (EX1068–EX1072). Dr. Stark refused, instead alerting Petitioner's counsel to potential fraud by providing a marked-up declaration (EX1072) identifying numerous false statements. Patent Owner then repackaged these false statements into other inventor declarations (EX2003, EX2004).

Patent Owner's Statement

On November 8, 2024, Patent Owner served on Petitioner a proposed Motion for Sanctions. The motion seeks sanctions for Petitioner's ethical violations that include, among other things, violating a court order (EX2018) in the underlying litigation not to solicit confidential information from the former Buergofol employee and inventor Dr. Stark and to terminate any interview if it appears that Dr. Stark may reveal confidential matters. Petitioner's counsel discussed a work-product, draft declaration in a video conference with Dr. Stark instead of terminating the conference as soon as Dr. Stark mentioned the work-product declaration.

Petitioner's counsel also failed to inform PO's counsel that it had received this information, including the underlying document, but instead waited three months and then filed the work-product, draft declaration (EX1070-EX1072) with Petitioner's reply.

The parties are available for a conference call this Friday, December 6, 2024, at any time starting at 12 PM ET or later.

Best regards,

Michael Neustel
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Lead Counsel for Petitioner

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