

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

OMEGA LINER COMPANY, INC.,
Petitioner,

v.

BUERGOFOL GmbH,
Patent Owner.

IPR2023-01372
Patent 9,657,882 B2

Before GRACE KARAFFA OBERMANN, KIMBERLY MCGRAW,
and JAMES J. MAYBERRY, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

ORDER

*Granting Patent Owner's Motion to Substitute (Paper 76);
and*

*Granting Patent Owner's Request to File
Certified English Translations of Exhibits 2036–2039
37 C.F.R. §§ 42.5, 42.6(a)(2)(iv), 42.65(b)(1), 42.65(b)(2)*

I. INTRODUCTION

On January 7, 2025, Patent Owner filed an original Opposition to Petitioner’s Motion for Sanctions (Paper 73, “the original Opposition”) and supporting evidence, including Exhibits 2036–2039.

This Order resolves Patent Owner’s Motion to Substitute (Paper 76, “Motion”), in which Patent Owner seeks the Board’s authorization to expunge the original Opposition (Paper 73) and substitute a corrected Opposition to Petitioner’s Motion for Sanctions (Paper 77, “the corrected Opposition”).

In addition, this Order resolves Patent Owner’s related email request to file certified English translations of Exhibits 2036–2039. *See* Ex. 3009 (email request).

Petitioner does not oppose the Motion and “takes no position on” the email request. *Id.*

II. DISCUSSION

Patent Owner states that it realized within one day of filing the original Opposition that the accompanying Exhibits 2036–2039 consist “of machine translations of German language emails” and, promptly, “arranged for certified translations of those exhibits.” Ex. 3009. Patent Owner argues, and Petitioner does not contest, that the certified English translations differ from the machine translations only as to four “small grammatical changes” identified in the request. *Id.* Patent Owner further advances Board rules that authorize filing of supplemental evidence, such as the English translations, to cure a deficiency noticed by objection from an opposing party. *Id.* (citing 37 C.F.R. §§ 42.64(b)(1)–(b)(2)).

Patent Owner also states that it was informed by Petitioner that Patent

Owner's original Opposition (Paper 73) includes "improperly formatted" margins that result in an overage of about 1.5 pages over the 15-page limit applicable to that paper. Paper 76 at 1. In response, Patent Owner seeks to substitute the corrected Opposition (Paper 77), which is modified to comply with the page limit, or, in the alternative, "seeks a waiver of the document margins requirement under 37 C.F.R. § 42.6(a)(2)(iv)." *Id.*

On this record, for good cause shown, we grant Patent Owner's unopposed Motion to Substitute (Paper 76) to the extent that we authorize the substitution of the original Opposition (Paper 73) with the corrected Opposition (Paper 77). We expunge the original Opposition (Paper 73). We further grant Patent Owner's related email request for authorization to file certified English translations of Exhibits 2036–2039.

In particular, regarding the good cause standard for Patent Owner's Motion to Substitute, we determine that Patent Owner's uncontested assertion that its failure to comply with the margin and 15-page limit requirement in the original Opposition (Paper 73) was "inadvertent." Paper 76 at 1. We also accept Patent Owner's uncontested assertion that the changes made to comply with the 15-page limit, resulting in the corrected Opposition (Paper 77), do not materially alter the substance of that paper. *See* Paper 76 at Exhibit A¹ (showing in red-line changes made to the original Opposition (Paper 73) that result in the corrected Opposition (Paper 77)).

We further determine that no prejudice results from allowing the requested substitution, or granting the email request to file supporting certified English translations of Exhibits 2036–2039. We accept Patent

¹ Exhibits should not be filed as attachments to papers. Going forward, Patent Owner should file papers and exhibits separately.

Owner's uncontested assertion that the errors were inadvertent and correction was timely sought. The corrected Opposition and certified English translations of Exhibits 2036–2039 shall be deemed timely filed.

III. ORDER

In consideration of the foregoing, it is:

ORDERED that Petitioner's Motion to Substitute (Paper 76) is *granted* to the extent that we authorize the substitution of the original Opposition (Paper 73) with the corrected Opposition (Paper 77);

FURTHER ORDERED that original Opposition (Paper 73) is *expunged*;

FURTHER ORDERED that Patent Owner's email request (Ex. 3009) for authorization to file certified English translations of Exhibits 2036–2039 is *granted*; and

FURTHER ORDERED that the corrected Opposition (Paper 77) and the certified English translations of Exhibits 2036–2039 are deemed timely filed.

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