

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRIME TIME TOYS LLC, PRIME TIME TOYS LTD.,
and EASEBON SERVICES LTD.,
Petitioner,

v.

SPIN MASTER, INC.,
Patent Owner.

IPR2023-01461
Patent 8,596,255 B2

Before HYUN J. JUNG, NEIL T. POWELL, and BRENT M. DOUGAL,
Administrative Patent Judges.

JUNG, *Administrative Patent Judge.*

ORDER

Granting Petitioner's Motion to Correct Exhibits 1016 and 1017
37 C.F.R. § 42.104(c)

Conduct of the Proceeding
37 C.F.R. § 42.5

With our authorization, Prime Time Toys LLC, Prime Time Toys Ltd., and Easebon Services Ltd. (collectively “Petitioner”) filed a Motion to Correct Exhibits 1016 and 1017 under 37 C.F.R. § 42.104(c). Paper 17 (“Mot.” or “Motion”).

Under 37 C.F.R. § 42.104(c), “[a] motion may be filed that seeks to correct a clerical or typographical mistake in the petition,” and “[t]he grant of such a motion does not change the filing date of the petition.”

Exhibit 1016 is a Declaration of Joel Delman. The declaration states that “[m]y CV is attached to this report as Exhibit A” (Ex. 1016 ¶ 12), “complete list of [the declarant’s] patents and published applications is attached as Exhibit B” (*id.* ¶ 22), “complete list of [previous] matters [that the declarant testified as an expert] is attached as Exhibit C” (¶ 25), and “[a]ttached as Exhibit D is the list of articles and publications I have written” (*id.* ¶ 26). According to Petitioner, “due to a clerical error,” these exhibits “were inadvertently omitted from his declaration at the time it was filed.” Mot. 1.

Also, a Declaration of Dr. Maureen T. F. Reitman, Sc.D., F.S.P.E., P.E. was filed as Exhibit 1017. The testimony includes footnotes that cite to “her CV, excerpts from textbooks, scientific publications, and various U.S. patents.” *See, e.g.*, Ex. 1017 ¶¶ 18–27, 29–45, 47–50; *see also* Mot. 1. Petitioner argues that it intended to include these as attachments, but “due to the same clerical error,” they “were inadvertently omitted from her declaration at the time it was filed.” *Id.*

Petitioner provides declarations from lead counsel and a senior counsel. Ex. 1029 (Declaration of Kenneth P. George); Ex. 1030 (Declaration of Matthieu Hausig). With support from these declarations, Petitioner contends that the error was clerical and the error and missing

exhibits and appendices were not discovered until late August 2024. Mot. 2, Mot. 8–11. Corrected versions of Exhibits 1016 and 1017 are attached to the Declaration of Matthieu Hausig. Ex. 1030 ¶ 16.

Petitioner also argues that the corrected versions “do not raise any new matter or issue” because Patent Owner had the missing exhibits and appendices in related proceedings IPR2023-01339 and IPR2023-01348, where complete declarations were filed with “the same exhibits and appendices that Petitioners seek to add to Exhibits 1016 and 1017 in this IPR.” Mot. 2–3; Ex. 1029 ¶ 6; Ex. 1030 ¶ 7; *see also* Mot. 4–7 (explaining in detail how the exhibits and appendices are the same), 10–11 (arguing that Patent Owner would not be prejudiced, because Patent Owner was served in the related proceedings with the exhibits and appendices to be added to Exhibits 1016 and 1017 in this proceeding).

Petitioner represents that “[n]o substantive changes have been made to the text and opinions included in the Delman and Reitman Declarations,” and “[t]he corrected versions merely add the unintentionally omitted exhibits and appendices.” Mot. 2; *see also id.* at 7, 8 (making the same representation).

According to Petitioner, corrected versions of Exhibits 1016 and 1017 were served on Patent Owner on August 30, 2024 and “Patent Owner has stated that it does not oppose the present Motion, subject to Petitioners’ representations of the clerical errors involved.” Mot. 3 (citing Ex. 1029 ¶¶ 22–23); *see also id.* at 10 (“Patent Owner does not oppose this Motion or correction of Exhibits 1016 and 1017.”).

Based on our review of the record and Petitioner’s arguments and representations, Petitioner’s Motion is granted.

Papers 1, 3, and 17; Exhibits 1021, 1029, and 1030

Petitioner also filed Papers 1, 3, and 17 and Exhibits 1021, 1029, and 1030 with “Parties and Board” availability. No motion to seal has been filed for these papers and exhibits.

Petitioner should review these papers and exhibits to verify that the “Parties and Board” availability is correct, and, if so, file a motion to seal. If the “Parties and Board” availability is not correct, Petitioner should inform the Board so that it can be changed to “Public” availability.

Petitioner should also verify that paper and exhibits filed in related proceedings have been filed using the appropriate availability.

ORDER

In view of the foregoing, it is hereby:

ORDERED that Petitioner’s Motion to Correct Exhibits 1016 and 1017 is *granted*;

FURTHER ORDERED that Petitioner is authorized to file Attachments A and B accompanying the Declaration of Matthieu Hausig (Ex. 1030) as Corrected Exhibits 1016 and 1017 within five days of the date of this Order;

FURTHER ORDERED that, after Corrected Exhibits 1016 and 1017 have been filed, originally filed Exhibits 1016 and 1017 will be expunged; and

FURTHER ORDERED that Petitioner confirm within five days of the date of this Order that the correct availability has been applied to Papers 1, 3, and 17 and Exhibits 1021, 1029, and 1030 in this proceeding and to the papers and exhibits in related proceedings.

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