Trials@uspto.gov
571-272-7822

Paper 13
Date: September 26, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASKELADDEN L.L.C.,
Petitioner,

v.

CALABRESE STEMER LLC,
Patent Owner.

IPR2024-00367 (Patent 7,357,310 B2)
IPR2024-00368 (Patent 8,783,564 B2)
IPR2024-00369 (Patent 7,954,706 B2)[1]

Before SHARON FENICK, SCOTT B. HOWARD, and ANDREAS BALTATZIS, *Administrative Patent Judges.*

BALTATZIS, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5(a)

---

[1] The Board is entering the same Order in all captioned proceedings. The parties are not authorized to use this combined caption.

On September 23, 2024, Patent Owner requested, by email, authorization to extend the due date for the Patent Owner Response in each of the above-listed proceedings. *See* Ex. 3001[2]. The Board deemed Patent Owner's communication as a request for authorization to file a motion to amend the scheduling order *pro nunc tunc* in each proceeding. *Id.* On September 24, 2024, the parties jointly filed a paper stipulating to modifications of and/or requesting the Board modify the Scheduling Order (Paper 7) as to DUE DATES 1 and 2, to the extent permitted by the Board. *Id.* The parties also indicated by email that certain issues remained to be resolved. *Id.* A conference call was held with the parties and the Board on September 25, 2024 to discuss these remaining issues. *See id.*

During the conference, Petitioner did not oppose Patent Owner's request for authorization to extend DUE DATE 1 for Patent Owner's Response, but Petitioner opposed Patent Owner's request for authorization to extend Due Date 1 for filing a Motion to Amend in IPR2024-00367, particularly in light of Patent Owner's failure to confer with the Board no later than two weeks prior to DUE DATE 1. *See* Paper 7, 4–5.

In this case, we treat the conference between the parties and the Board on September 25 as the Motion to Amend conference, and under these circumstances, we excuse Patent Owner's failure to request the conference at the appropriate time. We find that there is good cause to extend the date for filing the Motion to Amend, to promote the efficient and economical use of

[2] We refer to exhibits and papers in IPR2024-00367 as representative except as indicated; corresponding exhibits and papers have been entered in each proceeding.

Board and party resources. We also extend DUE DATE 2 as to Petitioner's opposition to the Motion to Amend. Accordingly, we find no prejudice against Petitioner in granting an extension to Patent Owner to file the Motion to Amend.

Patent Owner indicated it would not be filing a Patent Owner Response in IPR2024-00369. We discussed whether Patent Owner intended this to be a request for adverse judgement of that proceeding through an abandonment of the contest; Patent Owner indicated that it did not. *See* 37 C.F.R. § 42.73(b). We note that, as stated in the scheduling order, all arguments not raised in a Patent Owner response may be deemed forfeited. IPR2024-00369, Paper 8 (Scheduling Order), 9. The scheduling order additionally notes that a conference call must be arranged with the parties and Board if Patent Owner elects not to file a response. *Id.* We consider the September 25 call to have fulfilled that function.

In consideration of the foregoing, it is hereby:

ORDERED that DUE DATE 1 set in the Scheduling Order in each proceeding is changed to September 27, 2024; and

FURTHER ORDERED that DUE DATE 2 set in the Scheduling Order in each proceeding is changed to December 20, 2024.

IPR2024-00367 (Patent 7,357,310 B2)
IPR2024-00368 (Patent 8,783,564 B2)
IPR2024-00369 (Patent 7,954,706 B2)

FOR PETITIONER:

Alton L. Absher
Andrew W. Rinehart
Philip E. Hawkyard
KILPATRICK TOWNSEND & STOCKTON LLP
aabsher@kilpatricktownsend.com
arinehart@kilpatricktownsend.com
phawkyard@uchastings.edu

FOR PATENT OWNER:

Werner H. Stemer
Jacob C. Stemer
CALABRESE STEMER LLC
wstemer@patentusa.com
jstemer@patentusa.com