

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SLACK TECHNOLOGIES, LLC. AND SALESFORCE, INC.,
Petitioner,

v.

WRINKL, INC.,
Patent Owner.

IPR2024-01489
Patent 11,973,731 B2

Before JEFFREY S. SMITH, NEIL T. POWELL, and NABEEL U. KHAN,
Administrative Patent Judges.

SMITH, *Administrative Patent Judge.*

ORDER
Conduct of the Proceeding
Granting Patent Owner's Motion for Termination
35 U.S.C. § 311(c) and 37 C.F.R. §§ 42.72, 102

This *inter partes* review was instituted based on Petitioner’s Petition, which sought *inter partes* review of certain claims of U.S. Patent No. 11,973,731 B2 (“the ’731 patent”). Paper 1 (“Pet.”); Paper 6. Subsequently, with the Board’s authorization, Patent Owner filed a Motion to Terminate. Paper 11 (“Mot.”). Petitioner filed an Opposition to the Motion. Paper 12 (“Opp.”). And Patent Owner filed a Reply in Support of the Motion. Paper 13 (“Reply”).

Patent Owner argues that we should terminate the *inter partes* review because Petitioner’s Petition was not filed in accordance with 35 U.S.C. § 311(c)(1), which provides, in relevant part, that “[a] petition for inter partes review shall be filed after . . . the date that is 9 months after the grant of a patent.” Mot. 3–4. Patent Owner asserts that “[t]here is no dispute that the ’731 patent is subject to the AIA and, thus, to the nine-month waiting period of § 311(c).” *Id.* at 3. Patent Owner explains that the ’731 patent issued on April 30, 2024, and Petitioner filed its Petition for *inter partes* review “only five months later, on September 26, 2024.” *Id.* at 4. Patent Owner contends that we have “the authority and an obligation to terminate an [*inter partes* review] proceeding even after institution if the petition was untimely.” *Id.* at 2.

Petitioner counters that we need not and should not terminate, noting 35 U.S.C. § 314(d)’s provision that an institution decision is “final and nonappealable.” Opp. 2. Petitioner faults Patent Owner for not raising this issue before *inter partes* review, asserting that certain Board cases “confirm that procedural objections must be raised early.” *Id.* at 2–3 (citing *Special Tactical Servs., LLC v. Hagedorn*, IPR2019-00240, Paper 7 at 4 (PTAB Dec. 19, 2018); *Tarsco Bolted Tank Inc. v. Tank Connection, LLC*,

IPR2016-1273, Paper 3 at 1–2 (PTAB July 15, 2016); *Samsung Elecs. Co., Ltd. v. Memoryweb, LLC*, IPR2022-00885, Papers 3, 8, 11 (PTAB 2022)). Petitioner further argues that “[t]he Board has broad discretion to manage its proceedings and may excuse procedural defects where justice so requires.” *Id.* at 5 (citing 37 C.F.R. § 42.5(c)(3)). Suggesting that Patent Owner tactically delayed raising this issue, Petitioner argues that it would suffer undue harm if we dismiss the Petition “after the time for filing any corrected [*inter partes* review].”¹ *Id.* at 5. Finally, Petitioner argues that it would be appropriate for us to provide it relief by “precluding [Patent Owner] from contesting the timeliness of the petition at this stage” or “[a]mending the accorded filing date” of the Petition. *Id.* at 6–7.

Weighing the parties’ arguments, we find Patent Owner’s more persuasive under the circumstances here. As Patent Owner notes, there is no dispute that the Petition sought *inter partes* review before that was available under 35 U.S.C. § 311. Mot. 3–4; *see generally* Opp. And we do not agree with Petitioner’s categorical position that “procedural objections *must* be raised early.” Opp. 3 (emphasis added). Petitioner does not provide reasoning or authority persuading us that we cannot terminate an *inter partes* review merely because a patent owner disputes compliance with the statute after institution. Additionally, to the extent Petitioner is correct that we have leeway to sustain the trial even though the Petition was not filed in accordance with § 311(c), we do not find the circumstance here warrant doing so.

¹ This apparently refers to Petitioner now being time-barred under 35 U.S.C. § 315(b) due to a related district court proceeding.

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It is hereby:

ORDERED that Patent Owner's Motion to Terminate is *granted*; and
FURTHER ORDERED that this proceeding is terminated.

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