

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SLACK TECHNOLOGIES, LLC. and
SALESFORCE, INC.,
Petitioners,

v.

WRINKL, INC.,
Patent Owner

Case Nos.: IPR2024-01490
U.S. Patent No. 11,973,731

**PETITIONERS' OPPOSITION TO PATENT OWNER'S
MOTION TO TERMINATE**

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Petitioners Slack Technologies, LLC and Salesforce, Inc. (collectively, “Petitioners”) respectfully request that the Board deny Patent Owner Wrinkl Inc.’s (“PO”) motion to terminate this *inter partes* review (No. IPR2024-01490, the “1490 IPR”) of Claims 1–30 of U.S. Patent No. 11,973,731 (“the ’731 Patent”). Alternatively, Petitioners request that the Board preclude PO from contesting the timeliness of the petition or amend the accorded filing date.

I. FACTUAL BACKGROUND

On April 30, 2024, the ’731 Patent was issued. Ex. 1001. A few weeks later, on May 23, 2024, PO filed a complaint in the District of Delaware. Ex. 1009. The complaint was served on May 24, 2024. Ex. 1008.

On September 26, 2024, Petitioners filed two IPR petitions with the Board: the IPR-2024-01489 IPR (“1489 IPR”), addressing issues related to the priority date of the ’731 Patent; and 1490 IPR, challenging the patent based on certain prior art references assuming the asserted priority date. On October 23, 2024, the Board issued Notices of Filing Date Accorded in both proceedings. 1489 IPR, Paper 3; 1490 IPR, Paper 3. The notices set a January 23, 2025 deadline for PO to submit a preliminary response. PO elected not to file any preliminary response.

On April 21, 2025, the Board instituted trial in both proceedings. 1489 IPR, Paper 6; 1490 IPR, Paper 6. The deadline to request rehearing was May 5, 2025. 37 C.F.R. § 42.71(d)(1). PO also elected not to file a rehearing request. On May 28, 2025, PO—for the first time—objected to the timing of the petitions. Following a hearing with the Board (1489 IPR, Paper 10; 1490 IPR, Paper 10), PO filed motions

to terminate in both proceedings. 1489 IPR, Paper 11; 1490 IPR, Paper 11.

II. THE BOARD SHOULD DENY PO'S MOTION TO TERMINATE

A. Institution is “Final and Nonappealable” Under § 314(d) and Board Precedent Affirms This Principle.

The Board instituted trial on April 21, 2025. 1490 IPR, Paper 6. Under 35 U.S.C. § 314(d), institution decisions are “final and nonappealable.” PO did not seek rehearing by the May 5, 2025 deadline. Instead, PO waited *more than a month after* institution—and *one day after* the one-year statutory bar under 35 U.S.C. § 315(b) for refiling had lapsed—before raising a timeliness objection for the first time.

This belated challenge is not a proper procedural objection but an impermissible collateral attack on the Board's institution decisions. PO could have filed a preliminary response but declined to do so. *See* 1490 IPR, Paper 3. Under 35 U.S.C. § 313, that stage exists to allow patent owners to contest whether a petition meets statutory requirements, including timing. *Id.* (stating PO “shall have the right to file a preliminary response to the petition ... *based upon the failure of the petition to meet any requirement of this chapter.*”) (emphasis added).

Once the Board issues its institution decision, 35 U.S.C. § 314(d) bars review of that determination. Allowing parties to withhold procedural objections until after institution invites gamesmanship and disrupts the orderly IPR process that Congress intended. A motion to terminate is not a substitute for a preliminary response or rehearing request. The IPR framework ensures such objections are raised and resolved before trial and resource commitments begin.

Notably, cases cited by PO involving dismissal of petitions filed during the nine-month exclusivity period affirm this framework. The Board dismissed the petitions in those cases based on a timeliness objection raised *prior to institution*, before the preliminary response deadline, and well before the Board or parties materially invested in the proceedings. *Special Tactical Servs., LLC v. Hagedorn*, IPR2019-00240, Paper 7 at 4 (P.T.A.B. Dec. 19, 2018); *Tarsco Bolted Tank Inc. v. Tank Connection, LLC*, No. IPR2016-01273, Paper 3 at 1-2 (P.T.A.B. 2016); *c.f. Samsung Elecs. Co., Ltd. v. Memoryweb, LLC*, No. IPR2022-00885, Paper 3, Paper 8, and Paper 11 at 6 (P.T.A.B. 2022) (raised in preliminary response). Far from supporting post-institution relief, these cases confirm that procedural objections must be raised early, consistent with the Board’s practice of addressing them pre-institution when correction is still feasible.

PO’s reliance on *Donner Tech., LLC v. Pro Stage Gear, LLC*, is unavailing. IPR2018-00707, Paper 13 at 3–4 (P.T.A.B. July 5, 2018). *Donner* involved the real party-in-interest requirement under § 312(a)(2)—a distinct, fact-intensive inquiry often requiring discovery. *Global Equity Management (SA) Pty. Ltd. v. eBay Inc.*, 798 Fed. Appx. 616, 619 (Fed. Cir. 2020). *Donner* did not involve § 311(c), nor did it suggest that motions to terminate that do not require factual inquiries are proper *after* institution. Because the objection here is procedural and requires no factual development, *Donner* does not support termination at this stage.

PO further cites *Wi-Fi One, LLC v. Broadcom Corp.*, 878 F.3d 1364 (Fed. Cir. 2018), arguing that the Board lacks jurisdiction because the petition was untimely

filed. That case, however, addressed the appealability of the one-year time bar under § 315(b), not the timing provision under § 311(c) at issue here. *Id.* at 1375. When assessing whether the § 315(b) decision was reviewable, the Federal Circuit noted that §§ 311-313, unlike § 315, were “preliminary procedural requirements,” indicating that those sections were not subject to review. *See id.* at 1374. Moreover, although *Wi-Fi One* found that a time bar § 315(b) decision was reviewable, it was abrogated on this ground by the Supreme Court in *Thryv, Inc. v. Click-To-Call Techs., LP*, 590 U.S. 45, 59-60 (2020). In that case, the Supreme Court explicitly held that “§ 314(d) bars challenges resting on § 315(b).” *Id.*

Indeed, the Board has recognized that certain statutory issues—such as under § 312(a)—do not deprive it of jurisdiction. *Lumentum v. Capella*, IPR2015-00739, 2016 WL 2736005, at *3 (P.T.A.B. Mar. 4, 2016) (“A lapse in compliance with [the requirements of § 312(a)] does not deprive the Board of jurisdiction over the proceeding, or preclude the Board from permitting such lapse to be rectified.”). Accordingly, *Wi-Fi One* (and the other pre-*Thryv* cases cited on IPR2024-01490, Paper 11 at 2) do not support post-institution termination based on an alleged § 311(c) defect. The relevant statutes and Board precedent confirm that threshold procedural objections must be raised—if at all—before institution. The Board’s institution decisions here are “final and nonappealable” under § 314(d), and PO’s effort to reopen that question *post hoc* is both procedurally improper and unsupported by any relevant authority.

B. The Board Has Discretion to Proceed in the Interests of Justice and Efficiency

The Board has broad discretion to manage its proceedings and may excuse procedural defects where justice so requires. *See* 37 C.F.R. § 42.5(c)(3) (“A late action will be excused on a showing of good cause or upon a Board decision that consideration on the merits would be in the interests of justice.”); *Lumentum*, 2016 WL 2736005, at *3. Here, the petition was filed and docketed months before PO raised any objection. The Board accepted it, accorded a filing date, and instituted review after substantive evaluation. 1490 IPR, Papers 1, 3, 6.

PO’s decision to remain silent until well after institution—calculated to come *one day* after the one-year bar for filing a new petition lapsed—undermines the credibility of its current objection. This kind of delayed procedural challenge, made only after PO allowed the statutory rehearing window to close, suggests a tactical effort to derail proceedings rather than a genuine jurisdictional concern.

Equitable considerations further weigh against termination. PO was fully aware of the petition timeline yet chose not to file a preliminary response or rehearing request, underscoring the absence of any prejudice to PO. In contrast, Petitioners would be unduly harmed after significant investment of time and resources if the petition were dismissed at this late stage, after the time for filing any corrected IPR. Likewise, the Board has already spent significant time and resources in reviewing the Petition and issuing its institution decision, in which it concluded that “there is a reasonable likelihood that [Petitioner] would prevail in providing the unpatentability of at least one of the challenged claims....” IPR 1490, Paper 6 at 34.

Proceeding on the merits avoids rewarding procedural gamesmanship and upholds the integrity and efficiency of the IPR process.

III. ALTERNATIVELY, THE BOARD MAY SANCTION PO'S CONDUCT UNDER 37 C.F.R. § 42.12

A. Precluding PO From Contesting Timeliness Under § 311(c)

Even if a defect were found in the petition's original filing date, the Board has authority under 37 C.F.R. § 42.12 to impose an appropriate remedy, including sanctions for misconduct, such as "dilatory tactics" or "any other improper use of the proceeding, including actions that harass or cause unnecessary delay or an unnecessary increase in the cost of the proceeding." 37 C.F.R. § 42.12(a)(4), (7).

PO waited until May 28, 2025—more than a month after institution and one day after the § 315(b) bar foreclosed refiling—to raise its timing objection. PO was aware of the accorded filing date as early as October 23, 2024 and could have raised an objection in a preliminary response, or through a rehearing request, but did not. This gamesmanship is precisely the dilatory conduct § 42.12 intended to deter.

Given these facts, the Board can remedy the situation under 37 C.F.R. § 42.12(b)(3), precluding PO from contesting the timeliness of the petition at this stage. That rule expressly permits "[a]n order precluding a party from presenting or contesting a particular issue." *Id.* PO's decision to withhold its objection until after institution and after critical statutory deadlines had passed is a misuse of process and has imposed unnecessary burden on both the Board and Petitioners. As such, PO should be precluded from contesting this issue now.

B. Amending the Petition's Accorded Filing Date

Additionally, the Federal Circuit has confirmed that the Board's sanctioning authority under § 42.12 is not limited to the specific remedies enumerated in subsection (b), holding that the Board can craft a sanction proportionate to the harm. *See Apple Inc. v. Voip-Pal.com, Inc.*, 976 F.3d 1316, 1323–24 (Fed. Cir. 2020). The Board may therefore invoke its authority to ***amend the accorded filing date of the petition to February 1, 2025***—nine-months after the patent issuance, curing any alleged defect while preserving the integrity of the proceeding. This remedy is justified under the standard applied in *Patent Quality Assurance, LLC v. VLSI Tech. LLC*, IPR2021-01229, Paper 102 at 36–37 (P.T.A.B. Dec. 22, 2022), where the Board considered: (1) whether the conduct warranted sanctions; (2) whether it caused harm to the proceedings or the USPTO; and (3) whether the proposed remedy is proportionate to that harm.

Each of those criteria is met here. PO's conduct has undermined procedural fairness, imposed unnecessary burdens on the Board and Petitioners, and was timed to exploit the expiration of the one-year bar. Amending the accorded filing date would be a narrowly tailored, proportionate response that restores procedural integrity without rewarding dilatory litigation tactics.

IV. CONCLUSION

For these reasons, the Board should deny PO's motion to terminate. Alternatively, the Board should preclude PO from contesting the timeliness of the petition or amend the accorded filing date.

Date: June 13, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 13, 2025, a true and correct copy of the foregoing PETITIONERS' OPPOSITION TO PATENT OWNER'S MOTION TO TERMINATE is being served via electronic mail as agreed by the parties on the following attorneys of record:

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