

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ADB SAFEGATE SWEDEN AB, ADB SAFEGATE BV, and
ADB SAFEGATE AMERICAS, LLC,

Petitioner

v.

HONEYWELL INTERNATIONAL INC.,

Patent Owner

Case PGR2023-00053
Patent 11,538,349 B2

PATENT OWNER'S PRELIMINARY RESPONSE

Table of Exhibits

No.	Description
2001	U.S. Patent No. 9,635,656

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Patent Owner Honeywell International Inc. ("Honeywell") respectfully submits this Preliminary Response to the Petition for post-grant review of U.S. Patent No. 11,538,349 ("the '349 Patent") purportedly filed by Petitioners ADB Safegate Sweden AB, ADB Safegate BV, and ADB Safegate Americas, LLC (collectively, "ADB").

I. INTRODUCTION

ADB failed to file a proper power of attorney designating the counsel that filed the Petition in this matter. Rather, the Power of Attorney (Paper 2) filed with the Petition: (1) authorized the attorneys at Xsensus LLP to represent Petitioners before the U.S.P.T.O. in connection with a Post Grant Review for a *different, unrelated* patent; (2) identified an incorrect individual as a signatory; and (3) included at least one signature from an unknown person that is not the individual identified under the signature line. Thus, Petitioners have failed to comply with the requirements of 37 C.F.R. § 42.10(b). Moreover, this failure to file a proper power of attorney with the Petition means that the Petition was incomplete as of its filing date, and that error cannot be corrected now because the statutory deadline for filing a post-grant review petition has long passed. *See* 37 C.F.R. § 42.206. Therefore, institution should be denied.

II. ARGUMENT

A. ADB's Petition is Unaccompanied by a Valid Power of Attorney, which is Required by Regulation

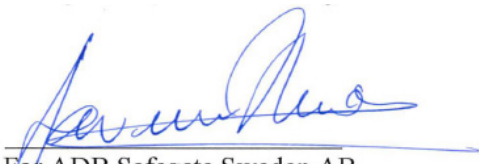
The power of attorney requirement is set forth in 37 C.F.R. § 42.10(b), which states that “A power of attorney *must* be filed with the designation of counsel ...” (emphasis added).¹ ADB’s Petition was filed by counsel from Xsensus, LLP, yet the only Power of Attorney filed authorized those attorneys to represent the three ADB Petitioner entities before the office on a different, unrelated patent. In particular, the Power of Attorney states that Petitioners “hereby appoint practitioners associated with Xsensus LLP, Customer Number 154930, as its attorneys to transact all business before the United States Patent & Trademark Office associated with a Post Grant Review *of U.S. Patent No. 9,635,656.*” *See* Paper 2, at 2 (emphasis added). That identified patent, titled “Data Communication Method, Communication System and Mobile Terminal” lists Mitsubishi Electric Corporation as the Applicant. *See* Ex. 2001. It is unrelated to Honeywell’s ’349 Patent challenged in the Petition.² Accordingly, there is no Power of Attorney appointing the attorneys from Xsensus LLP to file the Petition that it filed for the challenged patent at issue in this post-grant review. Thus, Petitioners failed to satisfy the requirement of 37 C.F.R. § 42.10(b), and the attorneys that filed the Petition in this

¹ A “power of attorney” is “[a]n instrument granting someone authority to act as agent or attorney-in-fact for the grantor.” *See, e.g., BLACK’S LAW DICTIONARY* (11th ed. 2019).

² The ’349 Patent at issue here concerns multi-sensor based aircraft detection, tracking, and docking methods and systems, and is assigned to Honeywell International Inc. *See* Ex. 1001.

matter were not properly authorized to do so.

Moreover, the Power of Attorney apparently misidentifies at least one of the signatories and also does not appear to be signed by one of the identified individuals set forth in the document. The Power of Attorney lists Laurent Dubois as the “CEO” and also as the “Director of Product Management.” *See* Paper 2, at 3. There are very different signatures for Mr. Dubois in the two locations, indicating that at least one of those signatures is not from him, but instead from an unidentified person (as shown below with the two signatures excerpted and placed side by side for comparison purposes):

By: 
For ADB Safegate Sweden AB
ADB Safegate BV, and ADB
Safegate Americas, LLC
Name: Laurent Dubois
Title: CEO


Name: Laurent Dubois
Title: Director Product Management

Id. This error could not have been a simple clerical oversight or typographical error stemming from confusion: the signatories were required to sign *above their own name and job title*. Yet, Petitioners filed and relied on it anyway. A document signed in this manner – by an unknown person different from the one identified –

cannot constitute a valid signature on a Power of Attorney.³ This violation of 37 C.F.R. § 42.10(b) is particularly inexcusable given the blatant falsity, and the failure by the signatories to correct the error when they were asked to sign above their own name and job title.

Petitioner's failure to file a proper power of attorney also means that the Petition was incomplete as of the filing date. A Petition "*must set forth*" the Grounds for Standing, whereby "[t]he *petitioner must certify* that the patent for which review is sought is available for post-grant review and that the petitioner is not barred or estopped from requesting a post-grant review" challenge. 37 C.F.R. § 42.204 (emphasis added). Without a proper power of attorney (as required by regulation), there is nothing to show that counsel that signed and filed the Petition was authorized to make such statements in Petitioner's Grounds for Standing, nor should the Patent Office afford any weight to such statements.

B. ADB Cannot Fix These Errors Now Because the Statutory Deadline for Filing a Post-Grant Review Petition Has Expired

"Where a party files an incomplete petition, no filing date will be accorded and the Office will dismiss the request if the deficiency in the petition is not corrected

³ Petitioner's Power of Attorney identifies job titles for three individuals, but it does not specify to what entity those job titles are associated. Paper 2, at 3. There is no way to probe whether and how those individuals (one of which who is not the individual that actually signed the document) are able to bind the three Petitioner entities, which would be required for a valid power of attorney document.

within the *earlier* of either one month from the notice of an incomplete petition, *or the expiration of the statutory deadline in which to file a petition for post-grant review.*” *See* 37 C.F.R. § 42.206 (emphasis added). This requirement that the Petition be fixed before the statutory deadline is unique for post-grant review petitions. The corresponding regulation for *inter partes* review petitions allows for a deficiency to be corrected within one month from the notice of an incomplete petition, and there is no similar provision concerning other statutory deadlines. *See* 37 C.F.R. § 42.106. Here, ADB waited until the last day within the 9 months allowed to file a post-grant review petition. *See* 35 U.S.C. § 321(c). It cannot correct the defects with the Petition now because the statutory deadline of September 27, 2023, for filing a post-grant review petition has expired. *See* 37 C.F.R. § 42.206. The Board lacks the authority to waive the statutory time-bar.

ADB's misidentification of signatories in its filed power of attorney has also prejudiced Honeywell. Honeywell has not been provided with the identity of the correct, relevant principles at the various ADB entities, and has thus been precluded from investigating potential additional deficiencies associated with the Petition, such as Real Party-in-Interest, because it lacks that important information. *See, e.g., Radware, Inc. v. F5 Networks, Inc.*, IPR2017-01249, Paper 10 (PTAB Oct. 23, 2017), and *Reflectix, Inc. v. Promethean Insulation Tech. LLC*, IPR2015-00039, Paper 18 (PTAB Apr. 24, 2015) (both denying institution for incorrect identification

of Real Parties-in-Interest as evidenced by the Power of Attorney). Allowing ADB to fix that issue now, months after the statutory deadline for providing that information, would deprive Honeywell of the time allocated to it to conduct a full investigation of the post-grant review petition and to prepare its defense.

C. The Board Should Set a Precedent Requiring that a Correct Power of Attorney Be Timely Filed for Institution

In addition to denying Institution here because of ADB's failure to comply with the applicable regulations and statutory deadlines, setting a precedent confirming that petitioners must file a correct power of attorney with a Petition – and before the statutory deadline passes – would only lead to more careful behavior by future petitioners. It would also provide patent owners with the opportunity to fully investigate the petition, which may include analyzing those principles signing the document to determine real-party-in-interest and/or estoppel issues in advance of the preliminary response deadline. Alternatively, creating precedent allowing petitioners to skip the power of attorney step, or to file faulty powers of attorney that can be corrected later – even after a statutory deadline has passed – would only have the potential to lead to gamesmanship, which should be discouraged.

Moreover, unsuccessful post-grant review petitions can deprive a party from the ability to later challenge a patent in future proceedings or at the district court. *See* 35 U.S.C. § 325(e). Allowing counsel without a proper power of attorney to file

a post-grant review petition would potentially allow such petitioners to escape estoppel because there is nothing to show that such counsel is authorized to act on behalf of and bind those companies. Alternatively, allowing a non-appointed counsel to bind a party, and deprive that party from the ability to later challenge the patent, would be similarly problematic. Simply enforcing the regulations as written and requiring a proper power of attorney be filed with a post-grant review petition, and denying institution when such regulations are not complied with, would eliminate that potential scenario.

There does not appear to be any other precedent of the Board addressing a similar failure made by other petitioners filing *inter partes* review or post-grant review petitions. However, the Board recently ordered a petitioner to show cause stating why an *inter partes* review petition should not be dismissed after the petitioner filed an apparently flawed power of attorney document. *See Mission Integrated Techs., LLC v. Joshua Clemente*, IPR2023-01285, Paper 8, at 5 (PTAB Dec. 19, 2023). There, the Board specifically cited its authority to dismiss a petition under 37 C.F.R. § 42.12(b)(8). *Id.* The Board has not yet determined whether to dismiss that petition.⁴

⁴ Because that case involves an *inter partes* review petition, instead of a post-grant review petition, it does not include the additional issue present here concerning compliance with the statutory deadlines according to 37 C.F.R. § 42.206.

Notably, courts that have analyzed failures to comply with regulations requiring that “power of attorney” documents be filed in other contexts have rejected and dismissed filings by parties without properly filed documents. *See, e.g., Vensure Hr, Inc. v. United States*, 164 Fed. Cl. 276, 287 (Fed. Cl. 2023) (dismissing Plaintiff’s tax refund claims finding that they were not “duly filed” because they did not comply with the IRS’s requirement that every claim be signed by the taxpayer or by the taxpayer’s agent “authorized by a valid power of attorney that accompanies the refund claim to which it applies”); *In re Alvaro*, No. 02-37357, 2005 WL 3789132, at *6 (Bankr. S.D.N.Y. Apr. 5, 2005) (dismissing plaintiff’s claim for lack of standing where the statute required that any representative of a creditor “*shall* be evidenced by a power of attorney” because the “use of the word ‘shall’ in the rule makes the production of the power of attorney mandatory; and the appropriate time to produce this document was at the time the Amended Complaint was filed.”). Those courts have simply required that the parties follow the regulations regarding power of attorneys, and have rejected filings when they have not. The Board should likewise reject the Petition filed here as it plainly does not comply with the regulations.

III. CONCLUSION

ADB’s post-grant review Petition was unaccompanied by a valid power of attorney, which was required by 37 C.F.R. § 42.10(b). That error cannot be fixed

now because the statutory deadline for filing a post-grant review petition has expired. *See* 35 U.S.C. § 321(c); 37 C.F.R. § 42.206. Honeywell therefore respectfully requests that ADB's Petition be denied institution.

Respectfully submitted,

Dated: January 4, 2024

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that, according to the word count provided by the word-processing software use to prepare the document, this Patent Owner's Preliminary Response contains 1,907 words, and thus is in compliance with the word count limit specified by 37 C.F.R. § 42.24(b)(1).

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CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2024, I caused a true and correct copy of the foregoing materials:

- Patent Owner's Preliminary Response and Exhibit 2001

to be served via electronic mail on the following counsel of record for Petitioners:

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