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**Sent:** Thursday, June 16, 2016 4:44 PM

**To:** Trials <Trials@USPTO.GOV>; Lori Gordon <LGORDON@skgf.com>

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**Subject:** RE: CBM2015-00161, -171, -179, -181, and 182: Request for call with Board to Seek Relief Due to Patent Owner's Improper Motion for Additional Discovery

Your Honors,

We note that Petitioners' email to the Board indicated Patent Owner would request that its filings and service will be deemed timely. To be sure that the Board is also considering this issue, which may have been overlooked, Patent Owner would like to officially provide its request.

The PTAB's records will reflect that Patent Owner completed, with the exception of the exhibit list, all of the filings for the 182 proceeding (132 patent) before midnight. The filings, including the Motions and exhibits, were the same across the proceedings, and the public versions for every proceeding were filed before midnight. Service of the confidential documents began on a rolling basis shortly after midnight, with a first set of documents at 12:35 AM and a set of the confidential exhibits at 12:39 AM. Thus, Petitioners had Patent Owner's complete argument by 12:39 AM. Filing and service continued on a rolling basis, and service of non-confidential documents and the updated exhibit lists was completed by 2:30 AM. Before Petitioners sent their email to the Board, Patent Owner had offered via email to Petitioners, that we would not oppose a request to the Board for an extension for their Response by a day, due to the 2.5 hour delay in receiving all of the documents.

Patent Owner believes it is in the interest of justice to deem its filings and service timely. The filing and service were delayed due to the care taken to avoid issues with the District Court Protective Order and Default Protective Order, for which negotiations and communications between the

parties extended into the afternoon on June 15.

Regards,  
Rachel Emsley  
Back-up Counsel for Patent Owner

**Rachel L. Emsley**  
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**From:** Trials [<mailto:Trials@USPTO.GOV>]  
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**Subject:** RE: CBM2015-00161, -171, -179, -181, and 182: Request for call with Board to Seek Relief Due to Patent Owner's Improper Motion for Additional Discovery

Counsel,

I apologize, I mistyped below, the previous authorization for Petitioner to file oppositions to Patent Owner's Motions for Additional Discovery is withdrawn until such time that the Board provides further authorization for such filings.

Thanks,  
Andrew Kellogg,  
Supervisory Paralegal  
Patent Trial and Appeal Board  
USPTO  
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Direct: 571-272-5366

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Counsel,

The panel has received Petitioner's request and requires further time to evaluate the appropriate course of action. The previous authorization for Petitioner to file oppositions to Patent Owner's Motions to Amend is withdrawn until such time that the Board provides further authorization for such filings.

The panel notes Patent Owner's request for extensions of time for the Patent Owner Responses in these proceedings. No extensions are authorized at this time.

Thanks,  
Andrew Kellogg,  
Supervisory Paralegal  
Patent Trial and Appeal Board  
USPTO  
[andrew.kellogg@uspto.gov](mailto:andrew.kellogg@uspto.gov)  
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**Subject:** CBM2015-00161, -171, -179, -181, and 182: Request for call with Board to Seek Relief Due to Patent Owner's Improper Motion for Additional Discovery

Your Honors-

Petitioner respectfully requests a call with the Board to discuss Patent Owner's motions for additional discovery filed in CBM2015-00161, -171, -179, -181, and 182. During the June 13, 2016 Teleconference in these proceedings, the Board authorized Patent Owner to file a motion for additional discovery in each proceeding but also ordered that the motion and any opposition would each be limited to 12 pages. (See, e.g., CBM2015-00161, Ex. 2040 at 42 (June 13, 2016 Teleconference Transcript)). The Board also permitted Patent Owner to attach a "listing" of the specific document it seeks. Patent Owner's motion were due on June 15, 2016.

Petitioner seeks a teleconference with the Board because Patent Owner's motions exceed the page limits set by the Board. In particular, Patent Owner attached to each motion a 9 page, 12 point font,

single-spaced exhibit (Exhibit 2155) that both lists the documents that Patent Owner seeks and describes the purported relevance of these documents. Patent Owner's motions refers to Exhibit 2155 as providing the "relevance of each document." (*See, e.g.* CBM2015-00161, Paper 52 at 1, n.2) Because Petitioner is limited to as 12 page brief in opposition, it will be prejudiced if it must respond to all of the arguments set forth in Patent Owner's 12 page brief and 9 page exhibit containing relevance arguments.

Petitioner also seeks a teleconference with the Board because Patent Owner's motions were neither timely filed nor served. In none of the above proceedings, did Patent Owner complete its filings by the deadline of June 15. In addition, in the case of CBM2015-00179, -181, and 182, Patent Owner did not serve Petitioner's counsel until 2:22 AM on June 16 (contrary to the certificates of service that it filed). Because Petitioner's responses are due on June 17, Patent Owner's late service is highly prejudicial.

As a remedy for the above, Petitioner will ask the Board to strike Patent Owner's motions for additional discovery.

We have conferred with Patent Owner and they intend to ask the Board to deem their motions as timely filed and served.

We are available today between 3-4pm ET for a conference with the Board.

Regards-

Lori A. Gordon

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