

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARRIS GROUP, INC.
Petitioner

v.

C-CATION TECHNOLOGIES, LLC
Patent Owner

Case IPR2014-00746

Patent 5,563,883

**PETITIONER'S UNOPPOSED MOTION TO EXPUNGE ORIGINALLY-
FILED EXHIBIT 1009 AND TO ACCEPT REPLACEMENT EXHIBIT 1009
FILED MAY 15, 2014**

Petitioner ARRIS Group, Inc. respectfully moves the Board for an order: (1) accepting the filing of replacement Exhibit 1009, filed May 15, 2014 as if it were filed May 13, 2014, and (2) expunging originally-filed Exhibit 1009 pursuant to 37 C.F.R. § 42.104(c). Authorization to file this motion was provided via email dated June 9, 2014. Petitioner has conferred with Patent Owner and Patent Owner has indicated it does not oppose the relief sought by this Motion.

I. LEGAL BASIS FOR REQUESTED RELIEF

Under 37 C.F.R. § 42.104(c), a party may file a motion to correct a clerical or typographical mistake in the petition. Since Rule 42.104(c) is remedial in nature, the Board has construed it liberally. *See ABB, Inc. v. ROY-G-BIV, Corp.*, IPR2013-00063, Paper 21, (PTAB Jan. 16, 2013). In applying section 42.104(c), the Board has held that inadvertent uploading incorrect appendices constituted a correctable clerical error. *Google Inc. v. Walker Digital, LLC*, CBM2014-00002, Paper 14 (PTAB Nov. 12, 2013). As the movant, the burden is on Petitioner to show that it is entitled to relief. *See* 37 C.F.R. § 42.20(c).

II. FACTUAL BASIS FOR RELIEF

The original petition for *inter partes* review in this proceeding was filed by the undersigned on May 13, 2014. While preparing the final documents for submission to the Board, the undersigned inadvertently numbered the same excerpts from Newton's Telecom Dictionary as both Exhibits 1005 and 1009,

rather than including separate dictionary definitions with each exhibit. *See* Ex. 1024 (Sommer Decl.), ¶¶ 4-5. This error was due in part to the fact that the undersigned had made a decision when finalizing the petition not to renumber all of the exhibits when he realized that two exhibits were from the same resource: Newton’s Telecom Dictionary. *Id.* at ¶ 3. On May 13, 2014, the undersigned did not notice that he had given two identical excerpts from Newton’s Telecom Dictionary different exhibit numbers; thus a final review of the exhibits for compliance with the Board’s rules before filing did not lead the undersigned to appreciate the clerical mistake that had been made when the exhibits were numbered when the petition was filed on May 13, 2014. *Id.* at ¶ 5.

The day after the original petition for IPR was filed, counsel for Petitioner learned of the error and promptly took steps to correct it. *Id.* at ¶ 6. The error was not intentional and is clerical in nature due to the incorrect numbering of the exhibits and the inadvertent omission of the correct exhibit. *Id.* at ¶ 5; 42.104(c); *Google Inc. v. Walker Digital, LLC*, CBM2014-00002, Paper 14 (PTAB Nov. 12, 2013). The clerical nature of the error is further demonstrated by the fact that the Petition and supporting declaration include quotations of the definitions that were inadvertently omitted when exhibit 1009 was filed. Specifically, the missing dictionary definitions included as part of the proper version of Exhibit 1009 (the definitions of “head end” and “load leveling”) are quoted in the originally-filed

petition at pages 19-20 and 36, as well as in the Declaration of Stuart Lipoff at page 32, note 2 (definition of “CATV”), page 82, note 4 (“head end”), and page 94 (“load leveling”).

The Patent Owner will not be prejudiced by the grant of this motion. Not only has Patent Owner indicated it does not oppose the relief sought, but within two days of the submission of the original petition, the undersigned filed and served a replacement copy of Exhibit 1009 (at the direction of the Board). Ex. 1024 (Sommer Decl.) ¶ 6. And, as discussed above, the missing dictionary definitions included as part of the proper version of Exhibit 1009 were each included in the documents filed on May 13, 2014. Therefore, Patent Owner will not be prejudiced should the relief sought be granted.

III. CONCLUSION

Given the foregoing, Petitioner respectfully requests that the Board enter an order accepting the filing of Exhibit 1009 as filed on May 15, 2014 and expunging Exhibit 1009 filed on May 13, 2014.

Dated: June 10, 2014

Respectfully submitted:

/s/ Andrew R. Sommer

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