

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASKELADDEN LLC,
Petitioner,

v.

SEAN I. MCGHIE and BRIAN BUCHHEIT,
Patent Owner.

Cases IPR2015-00122 (Patent 8,523,063)
IPR2015-00123 (Patent 8,523,063)
IPR2015-00124 (Patent 8,540,152)
IPR2015-00125 (Patent 8,540,152)
IPR2015-00133 (Patent 8,297,502)
IPR2015-00137 (Patent 8,297,502)¹

Before SALLY C. MEDLEY, JONI Y. CHANG, and
GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

ORDER

Conduct of the Proceeding and Expungement of Paper
37 C.F.R. §§ 42.5 and 42.7

¹ This order addresses issues that are the same in the identified cases. We exercise our discretion to issue one order to be filed in each case. The parties are not authorized to use this style heading.

IPR2015-00122 (Patent 8,523,063) IPR2015-00125 (Patent 8,540,152)
IPR2015-00123 (Patent 8,523,063) IPR2015-00133 (Patent 8,297,502)
IPR2015-00124 (Patent 8,540,152) IPR2015-00137 (Patent 8,297,502)

Patent Owner's Patent Owner Responses were due July 8, 2015, in the above-identified proceedings. Patent Owner did not file a Patent Owner Response in any of the proceedings. Nor did Patent Owner arrange a conference call with the Board and opposing counsel explaining that it would not file a Patent Owner Response per Board instructions to do so. *See* Paper 37, 3.² Because Patent Owner did not file a Patent Owner Response in any of the proceedings, on September 28, 2015, we ordered Patent Owner to file a paper in each proceeding explaining whether Patent Owner has abandoned the contest.³ Paper 57 ("Order"). On October 15, 2015, Patent Owner filed a paper in response to the Order in each proceeding. Paper 58 ("Submission"). For the following reasons, we expunge the Submission.

The Order instructed Patent Owner to file a paper explaining whether Patent Owner has abandoned the contest with an explanation that Patent Owner understands such abandonment will lead to the cancellation of its involved claims, or explain that it has not abandoned the contest. Paper 57. While the Submission explains that Patent Owner does not abandon the contest, the Submission is contrary to our Order, in that it contains many arguments outside the scope of the Order. Moreover, the arguments in the Submission reference other papers, essentially incorporating by reference those papers into the Submission contrary to 37 C.F.R. § 42.6(a)(3). In essence, the Submission is improper, goes beyond the scope of what we requested, and is prejudicial to Petitioner, who has not had an opportunity to

² Citations are to IPR2015-00122.

³ An abandonment of the contest is construed as a request for adverse judgment. 37 C.F.R. § 42.73(b)(4). A request for adverse judgment, on behalf of a patent owner, would result in the cancellation of the involved claims of a challenged patent.

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respond to the Submission. Still there are other procedural errors with the Submission.

The Submission is single spaced contrary to 37 C.F.R. § 42 (a)(2)(iii), which explains that double spacing must be used in documents created for the proceeding. Lastly, Patent Owner previously was instructed that all papers filed subsequent to June 23, 2015 must contain the signatures of both Mr. Buchheit and Mr. McGhie. Paper 56. The Submission contains only the signature of Brian Buchheit on the certificate of service page.

We understand from the Submission that Patent Owner does not abandon the contest—the information we desired originally per the Order. Accordingly, there is no occasion to authorize Patent Owner to refile a paper in response to our Order. We understand that Patent Owner does not abandon the contest in any of the proceedings.

For all of the above reasons, the Submission is contrary to prior Board orders and Board Rules, and, therefore, shall be expunged from the records of each of the proceedings. 37 C.F.R. § 42.7(a).

Order

It is

ORDERED that Patent Owner's October 15, 2015 Submission in each of the above-identified proceedings be expunged from the record.

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