

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

APPLE INC.  
Petitioner

v.

CONTENTGUARD HOLDINGS, INC.  
Patent Owner

Patent No. 7,774,280  
Issued: August 10, 2010  
Filed: October 4, 2004  
Inventors: Nguyen, *et al.*  
Title: System and Method for Managing Transfer of Rights Using Shared  
State Variables

*Inter Partes* Review No. IPR 2015-00354

---

**UNOPPOSED MOTION TO CORRECT FILING DATE OF  
PATENT OWNER'S PRELIMINARY RESPONSE**

Mail Stop PATENT BOARD  
Patent Trial and Appeal Board  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Patent Owner ContentGuard Holdings, Inc. (“CG”) respectfully moves the Patent Trial and Appeal Board (“PTAB”) to correct the filing date of CG’s Preliminary Response to April 6, 2015, pursuant to 37 C.F.R. 42.20-22. CG completed its submission of its Preliminary Response to the Patent Review Processing System (“PRPS”) on April 6, 2015, but due to inherent delay in PRPS’s processing of the electronic submission, the Preliminary Response was assigned a filing date of April 7.

The Motion is supported by the accompanying declarations of Timothy P. Maloney and Jackeline Torres.

Petitioner Apple Inc. (“Apple”) does not oppose this motion.

## **I. STATEMENT OF MATERIAL FACTS**

1. CG’s Preliminary Response in IPR2015-00354 was due on April 6, 2015. (Paper 7.) CG’s Preliminary Response was one of six preliminary responses due for CG on April 6. (Ex. 2024, Maloney Decl., ¶2.)

2. Electronic filing of CG’s Preliminary Response and supporting exhibits was made on CG’s behalf by Jackeline Torres at the direction of CG’s lead counsel, Timothy P. Maloney. (*Id.*)

3. Ms. Torres is a legal assistant at Fitch, Even, Tabin & Flannery LLP. (Ex. 2029, Torres Decl., ¶1.) Ms. Torres has electronically filed several papers using PRPS and is well versed in uploading and submitting documents to PRPS.

(*Id.* ¶2.)

4. Ms. Torres had already electronically submitted preliminary responses in five other PTAB proceedings on CG’s behalf on April 6 before beginning to file CG’s Preliminary Response in this proceeding. (*Id.* ¶¶3-4.) She completed the submission of the fifth filing at 11:55 p.m. Eastern Time on April 6. (*Id.* ¶4.)

5. Immediately after completing the fifth filing, Ms. Torres began working on the sixth and final filing that evening, CG’s Preliminary Response and supporting exhibits for IPR2015-00354. (*Id.* ¶5.) At approximately 11:56 p.m. Eastern Time on April 6, Ms. Torres initiated the process of uploading CG’s Preliminary Response and Exhibits 2001-2008 (collectively, the “Response”) using PRPS. (*Id.*) At approximately 11:58 p.m. Eastern Time the upload was complete. (*Id.* ¶6.)

6. By 11:58 p.m. Eastern Time, or no later than 11:59 p.m. Eastern Time, Ms. Torres clicked the “Submit” button on PRPS to complete the filing. (*Id.* ¶6.)

7. After Ms. Torres clicked the “Submit” button, PRPS displayed a progress wheel indicating that the submission of the already-uploaded Response was in progress. (*Id.* ¶7.) PRPS then displayed a Party Filing Notice. (*Id.*) The Party Filing Notice indicated that the Response had been accorded a filing date of April 7, 2015. (*Id.*)

8. Following submission of the Response to PRPS, at 12:01 a.m. Eastern Time on April 7, Mr. Maloney received a PRPS Notification Filing Courtesy Notice email indicating that the Response had been filed and was available on PRPS. (Ex. 2024, Maloney Decl., ¶3.) Apple’s counsel was copied on the same email. The PRPS Notification Filing Courtesy Notice email indicated that the Response had been given a filing date of April 7, 2015. (*Id.*)

9. The “My Correspondence” section on Mr. Maloney’s PTAB Trials Portal account indicates that Response was given a 12:00 a.m. time stamp on April 7, 2015. (Ex. 2029, Torres Decl. ¶8.)

10. At approximately 12:42 a.m. Eastern Time on April 7, a service copy of the Response was sent by email to counsel for Apple. (Ex. 2024, Maloney Decl. ¶5.)

11. On the morning of April 9, 2015, Mr. Maloney contacted PTAB Paralegal Specialist, Amy Kattula, to explain that although the files had been uploaded in time and the “Submit” button selected on April 6, the PRPS Notification Filing Courtesy Notice email indicated that the Response had been given a filing date of April 7, 2015. (*Id.* ¶6.)

12. At the recommendation of Ms. Kattula, Mr. Maloney contacted Apple’s lead counsel, Mr. Kushan, the same morning to inquire whether Apple would object to a motion to accept the Response. (*Id.*) Mr. Kushan responded by

email on April 13 indicating that Apple would not oppose such a motion. (*Id.* ¶¶7-8.) Mr. Maloney thereafter received authorization through Ms. Kattula on April 14 to file a motion to correct the filing date of the Response.

## **II. STATEMENT OF REASONS FOR RELIEF REQUESTED**

CG submits this Motion to request that the filing date accorded to its Preliminary Response (Paper 10) be corrected to April 6, 2015. For the reasons stated below, the preceding facts and supporting declarations show that the Preliminary Response was timely filed in accordance with 37 C.F.R. § 42.107(b).

### **A. CG's Response Met Statutory and Regulatory Requirements**

CG's Response satisfied the statutory and regulatory requirements for consideration as of April 6, 2015. 35 U.S.C. § 313 (specifying that the patent owner may file a preliminary response within the time period set by the Director); 37 C.F.R. § 42.107(b) (specifying that the preliminary response must be filed no later than three months after the date of a notice indicating that the request to institute a review has been granted a filing date).

In particular, Ms. Torres began uploading the complete Response on April 6 at 11:56 p.m. Eastern Time after having completed another PRPS submission at 11:55 p.m. (Ex. 2029, Torres Decl. ¶¶4-5.) It took PRPS several minutes to upload the Response. (*Id.* ¶5.) After the Response was uploaded, and not later than 11:59 p.m. and April 6, Ms. Torres clicked the "Submit" button on PRPS. (*Id.* ¶6.)

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.