

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRISTAR PRODUCTS, INC.,
Petitioner,

v.

CHOON'S DESIGN, LLC,
Patent Owner.

Case IPR2015-00838 (Patent 8,485,565 B2)
Case IPR2015-00840 (Patent 8,622,441 B1)¹

Before GRACE KARAFFA OBERMANN, JEREMY M. PLENZLER, and
JON B. TORNQUIST *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

ORDER
Conduct of Proceeding
37 C.F.R. § 42.5

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

IPR2015-00838 (Patent 8,485,565 B2)
IPR2015-00840 (Patent 8,622,441 B1)

Tristar Products, Inc. (“Petitioner”) filed Petitions to institute an *inter partes* review of certain claims of U.S. Patent Nos. 8,485,565 and 8,622,441. IPR2015-00838, Paper 1 (“838 Pet.”); IPR2015-00840, Paper 1 (“840 Pet.”). In the discussion of related litigation, the 838 Petition and 840 Petition each indicate that “[t]he earliest that Petitioner was served was March 4, 2014.” 838 Pet. 2; 840 Pet 1.

Choon’s Design, LLC (“Patent Owner”) filed a Preliminary Response in each of IPR2015-00838 and IPR2015-00840. IPR2015-00838, Paper 5 (“838 Prelim. Resp.”); IPR2015-00840, Paper 5 (“840 Prelim. Resp.”). In each of its Preliminary Responses, Patent Owner contends that “Tristar’s registered agent was actually first served with the complaint on February 28, 2014.” 838 Prelim. Resp. 1; 840 Prelim. Resp. 1. As a result, Patent Owner contends that institution of trial in IPR2015-00838 and IPR2015-00840 is barred under 35 U.S.C. § 315(b) because “Tristar filed its Petition on March 3, 2015, more than one year after it was first served with the complaint in [*Choon’s Design, Inc. v. Tristar Products, Inc.*, No. 2:14-cv-10848 (E.D. Mich.)].” 838 Prelim. Resp. 2; 840 Prelim. Resp. 2.

This issue is potentially dispositive to our decision on institution. Accordingly, Petitioner is authorized to submit a brief having the same arguments in each proceeding, by July 31, 2015, not to exceed ten (10) pages, that is limited to responding to Patent Owner’s contentions relative to 35 U.S.C. § 315(b). Arguments not responsive to Patent Owner’s contentions on this issue shall not be considered.

It is

ORDERED that Petitioner is authorized to submit a brief, having the same arguments in each of IPR2015-00838 and IPR2015-00840, limited to

IPR2015-00838 (Patent 8,485,565 B2)

IPR2015-00840 (Patent 8,622,441 B1)

ten (10) pages, responsive only to the issues raised by Patent Owner relative to 35 U.S.C. § 315(b), by July 31, 2015; and

FURTHER ORDERED that Patent Owner is not authorized to file any responsive briefing at this time.

IPR2015-00838 (Patent 8,485,565 B2)

IPR2015-00840 (Patent 8,622,441 B1)

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