

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARISTOCRAT TECHNOLOGIES, INC.,
Petitioner,

v.

IGT,
Patent Owner.

Cases IPR2016-00181; IPR2016-00182; IPR2016-00252;
IPR2016-00305; IPR2016-00307¹
Patents 6,375,570 B1, 6,702,675 B2, 7,303,469 B2

Before JOSIAH C. COCKS and MICHAEL W. KIM, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

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

¹ This Order addresses matters pertaining to each of the identified proceedings. We, therefore, exercise our discretion to issue one Order to be filed in each proceeding. The parties are not authorized to use this style heading for any subsequent papers.

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IPR2016-00305; IPR2016-00307
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1. Introduction

On June 8, 2016, a conference call was conducted between respective counsel for the parties and Judges Cocks and Kim. Petitioner, Aristocrat Technologies, Inc. (“Aristocrat”), was represented by Andrea Reister. Patent Owner, IGT (“IGT”), was represented by Robert Sterne.² The call had been requested by IGT to discuss authorization to file certain motions contemplated by IGT. IGT had arranged for a court reporter on the call.³

2. IGT’s Requested Motions

During the call, IGT indicated that it was requesting authorization to file the following motions: (a) a motion to terminate all five of the related IPR proceedings; and (b) a motion to stay the five related proceedings for six months.

a. Motion to Terminate

In our Decision instituting trial in this proceeding, we declined to deny institution on the basis of the equitable doctrine of assignor estoppel. *See, e.g.*, IPR2016-00181, Paper 7, 18–20. IGT expressed to the panel that the issue of the applicability of assignor estoppel in *inter partes* review proceedings is one pending before the Court of Appeals for the Federal Circuit in a case styled *Husky Injection Molding System v. Athena*

² Five related *inter partes* review proceedings were the subject of the conference call. Those proceedings are: IPR2016-00181; IPR2016-00182; IPR2016-00252; IPR2016-00305; IPR2016-00307 (collectively “the related IPR proceedings.”)

³ Once the transcript of the call is available, IGT should file a copy of it as an exhibit.

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Automations Ltd. (2015-1726). IGT indicated that, in the event that the Federal Circuit determined that assignor estoppel does apply in *inter partes* proceeding, it would seek to file a motion to terminate in each of the related IPR proceedings. The panel noted that, because the issue has not yet been decided and/or addressed by the Federal Circuit, IGT's requested authorization is premature. Accordingly, at this time, no motion to terminate is authorized.

b. Motion to Stay

IGT also indicated that it seeks authorization to file a motion to stay each of the related IPR proceedings for six months. IGT represented to the panel that such a motion is warranted pending the outcome of: (1) the above-noted *Husky* proceeding; (2) *Cuozzo Speed Technologies, LLC v. Lee*, 136 S. Ct. 890 (2016) (No. 15-446), which presently is awaiting a decision from the Supreme Court; and (3) a remand by the Federal Circuit to the district court concerning the related district court proceeding. Aristocrat indicated that it opposed authorization of a motion to stay.

By statute, a final determination in an *inter partes* review proceeding must "be issued not later than 1 year after the date on which the Director notices the institution of a review." 35 U.S.C. § 316(a)(11). Although the Director may extend the 1-year period "by not more than 6 months," a party seeking such extension must show "good cause" why that action is warranted. 35 U.S.C. § 316(a)(11); 37 C.F.R. § 42.5(c)(2).⁴ Here, whether the outcome of any of these cases will influence or impact the present related

⁴ IGT's requested motion for stay of the related IPR proceedings is tantamount to a request for extension of time.

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IPR proceedings is nothing short of speculation. Indeed, we note that at least the first two proceedings do not involve the patents underlying the related IPR proceedings, and IGT did not represent that the district court was going to take any particular action at any particular time. Moreover, it also is not apparent that a decision in any of those cases necessarily would provide guidance in disposing of any issue that is present in the particular related IPR proceedings involved here. We do not discern that the speculative potential of some possible outcome that is germane to the related IPR proceedings lends itself reasonably to a conclusion that IGT can demonstrate “good cause” for the extraordinary relief that it would seek, i.e., a preemptive, maximum contemplated extension of an *inter partes* review proceeding.

Furthermore, we note that trial is underway in each of the related IPR proceedings, and resolution of those trials, in some fashion, must occur. To the extent that a decision from any of the Supreme Court, Federal Circuit, or district court may impact any of these related IPR proceedings, it is not apparent why such impact cannot be assessed at the time it manifests without the need for a stay. We conclude, at this time, that the trials should proceed based on the Scheduling Order that was initially set in each of the related IPR proceedings. We do not authorize a motion to stay.

3. Order

It is

ORDERED that no motion to terminate or motion to stay is authorized as this time; and

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FURTHER ORDERED that the trials of the related IPR proceedings will continue based on the Scheduling Order presently in place in each proceeding.⁵

⁵ Those Scheduling Orders lay out Due Dates 1–7 for each proceeding. As noted in those Scheduling Orders, the parties are free to stipulate to changes to Due Dates 1–5 (*see, e.g.*, IPR2016-00181, Paper 8, 5).

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