

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CRYE PRECISION LLC,  
Petitioner,

v.

FIRSTSPEAR, LLC,  
Patent Owner.

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IPR2019-01152 – U.S. Pat. No. 9,974,379

IPR2019-01153 – U.S. Pat. No. 9,565,922

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**DECLARATION OF HEATH J. BRIGGS**

I, Heath J. Briggs, declare:

1. I am a partner with the law firm of Greenberg Traurig LLP out of its Denver, CO offices. I have been involved in more than 70 proceedings before the Patent Trial and Appeal Board and I am lead counsel for Patent Owner in this proceeding. I have personal knowledge of the facts set forth herein and if called upon to testify as to them, I can and will do so.
2. On or about 4:51 PM Mountain Time on Friday, December 20, 2019, I sent instructions to file the Requests for Rehearing in IPRs 2019-01152 and 2019-01153 (“the Rehearing Requests”) to Ms. Colleen Sphar, the paralegal tasked with filing and serving those papers that day.
3. I am aware that Ms. Sphar uses my PTAB E2E account often to file documents on behalf of firm clients in a variety of matters. She had my approval to do so in order to file the Rehearing Requests. I am familiar with PTAB E2E and its predecessor PRPS, and have on occasion, offered Ms. Sphar guidance and training on how to properly file documents with the Board. It is part of my standard practice to authorize paralegals to assist me with the mechanics of filing papers with the Board. I have worked with Ms. Sphar often in connection with various filings and she has filed hundreds if not thousands of documents with the PTAB on my behalf.

4. By about 5:10 PM, I had received the system-generated PTAB filing receipts related to the Rehearing Requests. (Exs. 1019-20.) I recall reviewing those filing receipts, noting that the phrase “Motion Filed” appeared in their subject lines and that they further reflected that “The motion and related document(s), if any, have been filed.” I noted that the requests stated “THERE WERE NO DOCUMENTS SUBMITTED WITH THIS REQUEST,” but I believed this statement reflected the fact that each request was unaccompanied by any other documents other than the request. For example, no exhibits were filed.
5. Shortly thereafter, I was cc’d in an email from Ms. Sphar to opposing counsel, which attached PDF copies of the Rehearing Requests. (Ex. 1021.) As of that time, I believed all of Petitioner’s obligations for properly filing the Rehearing Requests had been completed. Accordingly, on or about 5:13 PM, I forwarded Ms. Sphar’s email to the client, informing them that the two Rehearing Requests had been filed. (Ex. 1022.)
6. On March 25, 2020, the Board denied requests for rehearing in related IPRs2019-01169 and -01170, which are IPRs filed by the present Patent Owner, Firstspear LLC, against one of Petitioner’s patents. *See* Paper 15 in IPRs2019-01169 and -01170. Given Firstspear had filed its rehearing requests four days prior to the filing of our rehearing requests in the present IPRs, I believed that

the Board in the present IPRs would issue its decisions within a week or so of March 25, 2020. (Ex. 1023.)

7. It was not until the morning of April 9, 2020, when I received an email from a fellow team member working on these IPRs, Mr. Stephen Ullmer, that the Rehearing Requests in these IPRs were not reflected in the PTAB's E2E docket. I immediately investigated the situation. Later that day, I emailed opposing counsel informing them that we believed the filings had been submitted but a technical glitch appeared to have occurred since the Rehearing Requests did not appear in their respective dockets. (Ex. 1024.)
8. By the morning of April 10, 2020, our IT team had been able to retrieve the two system-generated filing receipts from my email archive, after which I emailed opposing counsel the same. (Ex. 1025.) After receiving opposing counsel's response to our meet-and-confer email, I immediately sent an email to the Board advising of the situation. (Ex. 1026.)
9. During the week of April 13, 2020, I reviewed several PTAB decisions relating to issues other parties have had with filing rehearing requests. It was at this time I realized I may have misinterpreted the "THERE WERE NO DOCUMENTS SUBMITTED WITH THIS REQUEST." Until I reviewed these decisions, I did not know that it was even possible to request rehearing

and receive a PTAB system-generated receipt stating “Motion Filed Notice” without the document being accepted in the PTAB E2E system.

10. Pursuant to 18 U.S.C. §1001, I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both.

Executed on this 25<sup>th</sup> day of April, 2020, in Denver, Colorado.

/Heath J. Briggs/

Heath J. Briggs