Trials@uspto.gov
571-272-7822

Paper 9
Entered: April 20, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CRYE PRECISION LLC,
Petitioner,

v.

FIRSTSPEAR, LLC,
Patent Owner.

IPR2019-01152 (Patent 9,974,379 B2)
IPR2019-01153 (Patent 9,565,922 B2)

Before KEN B. BARRETT, KRISTEN L. DROESCH, and ROBERT L. KINDER, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge.*

ORDER
Authorizing Petitioner's Motion Regarding the Filing of Requests for Rehearing
37 C.F.R. §§ 42.5 and 42.71(d)

On April 16, 2020, Judges Barrett, Droesch, and Kinder held a conference call with counsel for Petitioner and Patent Owner. The purpose of the conference call was to discuss Petitioner's email to the Board dated April 10, 2020, and, specifically, Petitioner's Requests for Rehearing of the decisions dated November 22, 2019, denying institution in the above-captioned cases. That email states, in pertinent part:

> Yesterday (April 9, 2020), Petitioner became aware that its requests for rehearing in IPR Nos. 2019-01152 and -01153 do not appear in the respective dockets for these cases. Petitioner filed these requests between 7:04pm on December 20, 2019, when staff for lead counsel first accessed the PTAB E2E filing system, and 7:12pm ET the same day, when Petitioner served Patent Owner with the filed documents (service email attached). Copies of the PTAB receipts for these filings are attached. A copy of the service email to opposing counsel is also attached.
>
> Petitioner requests that the Board update the online dockets to reflect Petitioner's filing of requests for rehearing in IPR Nos. 2019-01152 and -01153 on December 20, 2019. Petitioner further requests that the Board expedite ruling on these motions given their December filing dates.
>
> Counsel for Petitioner has conferred with counsel for Patent Owner and, despite being furnished with the attached PTAB receipts and having been served with the requests contemporaneously with their filing, Patent Owner opposes this request as it "does not view the motions as having been filed."

Based on the discussions during call, we understand Petitioner to have withdrawn the requests in its email for the Board to change the case records so as to indicate that Requests for Rehearing were filed and for the Board to expedite a ruling on those Requests for Rehearing. Instead, Petitioner requested on the call that we authorize a motion under 37 C.F.R. § 42.5 to allow Petitioner the opportunity to explain why we should accept the

submission of the Requests for Rehearing.[1] Patent Owner indicated that it does not oppose the authorization of the motion, and requested the opportunity to oppose that motion.

The timing of the briefing and the number of allowable pages were discussed and agreed to during the call.

As discussed on the call, each party may file the same respective brief in both of the subject cases and may use the two-case caption we have used above.

ORDER

For the foregoing reasons, it is

ORDERED that Petitioner is authorized to file, no later than April 23, 2020, a motion under 37 C.F.R. § 42.5 regarding the submission of its Requests for Rehearing, with the motion being no longer than six (6) pages;

FURTHER ORDERED that Patent Owner is authorized to file an opposition to Petitioner's motion two weeks after the filing of Petitioner's request, with the opposition being no longer than six (6) pages; and

FURTHER ORDERED that no further briefing is authorized at this time.

---

[1] "Any request [for rehearing] must be filed . . . [w]ithin 30 days of the entry of . . . a decision not to institute a trial." 37 C.F.R. § 42.71(d)(2). "A late action will be excused on a showing of good cause or upon a Board decision that consideration on the merits would be in the interests of justice." 37 C.F.R. § 42.5(c)(3).

IPR2019-01152 (Patent 9,974,379 B2)
IPR2019-01153 (Patent 9,565,922 B2)

PETITIONER:

Heath J. Briggs
Barry J. Schindler
GREENBERG TRAURIG, LLP
briggsh@gtlaw.com
schindlerb@gtlaw.com

PATENT OWNER:

James P. Murphy
Margaux A. Savee
POLSINELLI PC
jpmurphy@polsinelli.com
msavee@polsinelli.com