

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE NOCO COMPANY, INC.

Petitioner

v.

PILOT, INC.

Patent Owner

Case IPR2022-01237

Patent 11,124,077

Before JEFFREY W. ABRAHAM, JULIA HEANEY, AND STEVEN M.
AMUNDSON, *Administrative Patent Judges*

**PETITIONER’S REPLY TO PATENT OWNER’S
RESPONSE TO ORDER TO SHOW CAUSE**

Patent Owner has effectively abandoned the contest in this IPR proceeding by electing not to file a response to the Petition and by failing to abide by the instructions of the Scheduling Order to arrange a conference call with the parties and the Board if electing not to file a response. *See*, Scheduling Order (Paper 7), p. 9. Entry of adverse judgement against the Patent Owner is therefore appropriate under 35. C.F.R. § 43.73(b)(4) (“Actions construed to be a request for adverse judgment include... [a]bandonment of the contest.”) Further, this Patent Owner has a history of ignoring the Board’s scheduling orders in this same manner, and consequently its failure to comply with the requirements of the Scheduling Order should be seen as willful. *See*, IPR2021-01235, Paper 11 (ordering Pilot to show cause why adverse judgement should not be entered for failing to arrange a conference call with the Board when electing not to file a response to the petition). An entry of adverse judgement against the Patent Owner is therefore further warranted under 35 C.F.R. § 42.12 in view of the Patent Owner’s repeated failures to comply with this Board’s orders. *See*, 35 C.F.R. § 42.12(b)(4) (allowing for sanctions against a party for failure to comply with an applicable rule or order in the proceeding, including entry of adverse judgement).

Should the Board deem it appropriate to proceed to a final written decision, despite the Patent Owner’s purposeful failure to comply with the Scheduling Order, the substantive arguments included in the Patent Owner’s Response to

Order to Show Cause should be wholly disregarded. Patent Owner's inclusion of a substantive response to the Petition in its Response to Order to Show Cause is yet another attempt to sidestep the rules of this tribunal and the Board's Scheduling Order. Patent Owner's substantive arguments are clearly untimely, and should therefore be disregarded by the Board in preparing its final written decision.

Respectfully submitted,

Date: October 26, 2023

By: /Joseph M. Sauer/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Petitioner's Reply to Patent Owner's Response to Order to Show Cause was served on October 26, 2023 via email delivery directed to the counsel for Petitioner at the following addresses:

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Date: October 26, 2023

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