

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COASTAL INDUSTRIES, INC.
Petitioner,

v.

SHOWER ENCLOSURES AMERICA, INC.
Patent Owner.

Case IPR2017-00573
Patent 7,174,944

Before MICHAEL W. KIM, CARL M. DEFRANCO, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*.

ORDER

Conduct of Proceeding; Motion to Exclude
37 C.F.R. §§ 42.5, 42.64

On September 14, 2018, the Board received an e-mail from Petitioner indicating the following:

Following the advice from the Trial Division PTAB E2 Assistance Line, Petitioner is sending the following time sensitive request for guidance.

Patent Owner filed 3 separate Motions to Exclude last night. Paper 74 (15 pages), Paper 75 (14 pages), and Paper 76

(12 pages). Petitioner understands 37 CFR 42.24 limits each party to 15 pages for one motion to exclude and the same applies for the opposition. Petitioner's opposition to PO's 3 motions to exclude is due this upcoming Monday, Sept. 17, 2018. Petitioner would like to seek clarification on the number of motions to exclude each party is entitled to under the rules. If the PTAB's understanding of the rule is that each party is entitled to one 15 page motion and opposition, Petitioner will get authorization to answer to the first 15 pages (i.e. Paper 74) and seeks authorization to file a motion to strike Papers 75–76. Because of the expedited nature of the schedule and upcoming deadline, an early response from the PTAB is very much appreciated.

Petitioner has reached out to Mr. Fountain, PO's counsel, prior to this e-mail to see if PO was amenable to extend Due Date 12 by one or two business days to enable the parties to get guidance from the PTAB. Mr. Fountain was not amenable to the change without making changes to the entire schedule.

Ex. 3001. On the same day, the Board also received an e-mail from Patent Owner indicating the following:

Patent Owner disagrees with Petitioner's contention that only a single Motion to Exclude is permitted for the entire case, per side under the rules. There are other facts regarding this event that the Board should be aware of. A ruling as requested by Petitioner should not be granted without a hearing, and probably briefing on the legal issue.

Ex. 3001.

The relevant portion of 37 C.F.R. § 42.64(c) reads as follows:

A motion to exclude evidence must be filed to preserve any objection. The motion must identify the objections in the record in order and must explain the objections. The motion may be filed without prior authorization from the Board.

Only one motion to exclude is pre-authorized for a given due date. *See also* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,767 (Aug. 14, 2012) (article "a" used with "motion to exclude"); Paper 10, 7 (indicating

the same); Paper 49, 4 (referring to “motions” in plural in the first instance only to indicate the possibility that both parties may file such a motion). Indeed, to hold otherwise would effectively eviscerate the page limits set forth in 37 C.F.R. § 42.24(a)(v). Furthermore, we are unaware of any proceeding where, without prior authorization, the same party has filed multiple motions to exclude on a particular due date. Accordingly, Papers 74–76 will not be considered. As such, the rest of Petitioner’s request is moot.

To the extent Patent Owner was unclear that only one motion to exclude was authorized for a given due date, and also given that we are a little more than two weeks away from any supplemental oral hearing, Patent Owner is permitted one final opportunity to file a single motion to exclude, of no more than fifteen (15) pages, by Wednesday, September 19, 2018. Petitioner is similarly permitted a final opportunity to file a single opposition to that motion by Monday, September 24, 2018. Patent Owner is free to make any responsive arguments to the Petitioner’s opposition at the supplemental oral hearing.

Patent Owner asserts that Petitioner’s request “should not be granted without a hearing, and probably briefing on the legal issue.” As Petitioner’s request is moot, however, no such hearing or legal briefing is necessary.

In consideration of the foregoing, it is hereby:

ORDERED that Papers 74–76 will not be considered; and

FURTHER ORDERED that the Scheduling Order is amended such that Patent Owner is permitted to file a single motion to exclude by Wednesday, September 19, 2018, and Petitioner is permitted to file a single

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opposition to that motion by Monday, September 24, 2018. A reply paper is no longer authorized.

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