

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NAVISTAR, INC.,
Petitioner,

v.

FATIGUE FRACTURE TECHNOLOGY, LLC,
Patent Owner.

Case IPR2018-00853
Patent 7,143,915 B2

Before LINDA E. HORNER, BENJAMIN D. M. WOOD, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

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

We issue this order in response to Patent Owner Fatigue Fracture Technology, LLC's request for authorization to re-file its Motion to Exclude ("Motion"). Exhibit 3002.

Patent Owner asserts that it filed a Motion to Exclude on May 13, 2019 in PTAB E2E, but did not receive a confirmation email from the system regarding the filing. *Id.* Patent Owner also provided evidence that it served Petitioner's counsel with the Motion by email on the same day it was filed. *Id.* Patent Owner asserts that because it did not receive confirmation of the first filing, it filed the Motion a second time on May 13, 2019 in PTAB E2E. *Id.* Patent Owner provided a screen shot of the "Document Successfully Uploaded" flag as visible on the screen after the second filing of the Motion. *Id.* Patent Owner also provided a screen shot, dated May 14, 2019, of Patent Owner's docket in PTAB E2E, which shows two instances of Patent Owner's Motion to Exclude being filed on May 13, 2019. *Id.* When Patent Owner contacted the Board help line to request deletion of the second, duplicate Motion, the Board informed Patent Owner that the Board could not see either the first filing or the second filing of the Motion on the PTAB side of the PTAB E2E docket. *Id.* Patent Owner then contacted the Board to request authorization to re-file the Motion and to request that the Motion, as re-filed, be counted as timely filed. *Id.* Petitioner takes no position as to Patent Owner's request to re-file the Motion to Exclude. *Id.*

Based on the assertions made in Patent Owner's communication to the Board and the screenshots of the PTAB E2E system provided by Patent Owner, the Board authorizes Patent Owner to re-file its Motion to Exclude in PTAB E2E. The Motion, if re-filed by May 16, 2019, will be considered as timely filed. Because Petitioner's counsel was served with the Motion on

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the due date, we will not reset the due date for Petitioner's filing of any opposition to the Motion.

It is hereby:

ORDERED that Petitioner's request for authorization to re-file the motion to exclude is *granted*; and

FURTHER ORDERED that no changes to the due dates as set forth in the Scheduling Order are necessary.

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