

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LEVITATION ARTS, INC.,  
Petitioner,

v.

FLYTE LLC,  
Patent Owner.

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Case PGR2018-00073  
Patent D799,100

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Before JOHN C. KERINS, GRACE KARAFFA OBERMANN,  
and BART A. GERSTENBLITH, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

ORDER

*Granting Petitioner's Unopposed Motion to Correct a Clerical Error*  
37 C.F.R. § 42.104(c)

On September 6, 2018, Petitioner filed a Motion to Correct a Clerical Error. Paper 6 (“Motion”). Also on September 6, 2018, with the Motion, Petitioner filed the curriculum vitae of Petitioner’s witness, Mr. Geraint Krumpe. Ex. 1021 (“Krumpe CV”). In a nutshell, Petitioner requests leave to file the Krumpe CV in support of the Petition, without changing the filing date accorded to the Petition. Paper 6, 3; *see* Paper 5 (Notice of Filing Date Accorded Petition, dated July 3, 2018). Our rules contemplate that a petitioner may seek permission to correct a clerical error without changing the filing date accorded a petition. 37 C.F.R. § 42.104(c).

Patent Owner did not file an opposition to the Motion. *See* Ex. 3001 (email communication, authorizing briefing and setting forth a briefing schedule). Accordingly, we consider the Motion unopposed by Patent Owner.

The Motion is supported by a Declaration of Mr. Brian Lynch, Lead Counsel for Petitioner in this proceeding. Ex. 1023 (Lynch Declaration); Paper 1 (“Petition”), 2 (identifying Mr. Lynch as Lead Counsel). Mr. Lynch provides credible and persuasive information that the Krumpe CV was inadvertently omitted from filing with the Petition due to a clerical error that occurred during a planned merging and uploading of the document as a PDF file to support the Declaration of Mr. Krumpe (Ex. 1003). Ex. 1023 ¶¶ 3–8. Mr. Lynch further shows sufficiently that, once the omission was discovered, Petitioner undertook timely and adequate measures to correct the clerical error and minimize any prejudice to Patent Owner. *Id.* at ¶¶ 9–11.

Accordingly, we grant the Motion without requiring any change to the filing date accorded to the Petition.

ORDER

It is

ORDERED that Petitioner's Unopposed Motion to Correct a Clerical Error (Paper 6) is *granted*;

FURTHER ORDERED that Exhibit 1021, filed September 6, 2018, shall be considered in support of Mr. Krumpe's Declaration (Ex. 1003); and

FURTHER ORDERED that the correction of the clerical error pertaining to Exhibit 1021 shall not disturb the filing date accorded to the Petition.

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For PETITIONER:

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