

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EURO-PRO OPERATING LLC,
Petitioner,

v.

ACORNE ENTERPRISES, LLC,
Patent Owner.

Case IPR2014-00351 (Patent 6,515,262)
Case IPR2014-00352 (Patent 6,624,392)¹

Before MICHAEL J. FITZPATRICK, HYUN J. JUNG, and
SCOTT A. DANIELS, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

ORDER
Sanctions
37 C.F.R. § 42.12

¹ The Board is entering this ORDER in each proceeding. The parties are not authorized to use a caption identifying multiple proceedings absent our leave.

IPR2014-00351 (Patent 6,515,262)

IPR2014-00352 (Patent 6,624,392)

On January 30, 2015, Patent Owner filed a first version of a motion to exclude evidence in each proceeding. Paper 35 in IPR2014-00351; Paper 33 in IPR2014-00352. Each of those papers was missing a page. That same day, and without our authorization, Patent Owner filed a second version of its motion to exclude, which was filed upside down in both proceedings. Paper 36 in IPR2014-00351; Paper 34 in IPR2014-00352. Patent Owner then emailed the Board's staff, without first conferring with opposing counsel, requesting that we expunge the "incorrect, earlier sent files." January 30, 2015, email from Mr. Rey to trials@uspto.gov (copying opposing counsel).

At our direction, a staff member responded by email, stating: "Counsel, identify, via paper no., the papers you wish to have expunged. Also, confer with your opposing counsel and advise as to whether there is any objection." February 5, 2015, email from Board staff member to counsel of record for both sides. Inexplicably, counsel for Patent Owner appears to not have conferred with opposing counsel prior to sending another email. Instead, on February 6, 2015, it sent an email to the Board's staff that included the following statement:

Based on the undersigned counsel's determination, the subject page 14 inexplicably adhered to the back of page 13 during the scanning process of both Motion documents. Please expunge from the record the incomplete, earlier sent files (Paper No. 35 in IPR2014-00351 and Paper No. 33 in IPR2014-00352) with page 14 inadvertently [sic] omitted. *If there are any objections to the requested expungement of the incomplete Paper No. 35 and 33 respectively, please advise the undersigned counsel of record.*

February 6, 2015, email from Mr. Rey to trials@uspto.gov (copying opposing counsel) (emphasis added).

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In sum, Patent Owner uploaded motions to exclude into the PRPS System that it did not review sufficiently to discover that a page was missing from both. Patent Owner then attempted to remedy the situation by filing, without our authorization, replacement files, but the replacement files were themselves also not sufficiently reviewed, as they were upside down. We instructed Patent Owner to confer with its opposing counsel, and it failed to do so.

This is not the first time that Patent Owner has inconvenienced the panel, Board staff, and/or opposing counsel in these proceedings. Patent Owner has missed two scheduled conference calls. *See* Paper 20 in IPR2014-00352. Patent Owner has filed papers with typographical errors and then sought to file replacement versions. *See* Paper 26 in IPR2014-00352. Patent Owner has filed papers that do not comply with the formatting requirements of 37 C.F.R. § 42.6. *See* Paper 26 in IPR2014-00352.

We previously warned Patent Owner to not waste the time of the Board or opposing counsel and that further misconduct may result in sanctions. Paper 20 in IPR2014-00352. The Board may impose a sanction against a party for misconduct, such as for the failure to comply with an applicable rule or order and for actions that cause unnecessary delay or costs. 37 C.F.R. § 42.12(a)(1) and (7).

In consideration of the foregoing, it is hereby:

ORDERED that all of Patent Owner's motions to exclude (Papers 35 and 36 in IPR2014-00351 and Papers 33 and 34 in IPR2014-00352) be expunged; and

FURTHER ORDERED that Patent Owner may not file a motion to exclude in either proceeding regarding any evidence already of record in either proceeding. 37 C.F.R. § 42.12(b)(2).

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