

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRESIDIO COMPONENTS, INC.,
Petitioner

v.

AVX CORPORATION,
Patent Owner

Case IPR2015-01332
Patent 6,144,547

Before RAMA G. ELLURU, MITCHELL G. WEATHERLY, and
CHRISTOPHER G. PAULRAJ, *Administrative Patent Judges*.

ELLURU, *Administrative Patent Judge*.

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

Pursuant to 37 C.F.R. § 42.104(c), Petitioner Presidio Components, Inc. (“Presidio”) filed a Motion to Correct a Clerical Mistake Regarding Petition for *Inter Partes* Review of U.S. Patent No. 6,144,547. Paper 10 (“Mot.”); Paper 9, 2 (granting authorization for the motion). Specifically, Presidio requests an Order that it be authorized to file a corrected version of Exhibit 1009, an unexecuted declaration of Mr. Michael Randall, by submitting the executed signature page. Mot. 2. In support of its motion, Presidio submitted a declaration from lead counsel’s legal assistant (“declarant”). Ex. 1014. Patent Owner, AVX Corporation (“AVX”), filed an Opposition to the motion. Paper 11 (“Opp.”).

We have considered the arguments presented by both parties, and grant Presidio’s motion. Presidio contends that due to a clerical error on the part of the declarant, an unsigned copy of Exhibit 1009 was filed in the present case, even though the declarant was in possession of an executed copy of Exhibit 1009. Mot. 1–2; Ex. 1014, ¶¶ 5–7. AVX opposes the motion arguing that Presidio: does not explain what processes existed to ensure correct filings and how and why they failed; provides no assertion that there was any quality control procedures; does not provide a declaration from lead counsel that no changes were made to the declaration between May 24, when the declaration was signed, and June 3, when the petition was filed with the unsigned declaration; does not explain how legal counsel instructed the declarant; provides no attestation that someone checked the declaration; and does not provide an attestation from the declarant that she prepared an executed version of declaration with new page numbering before the present Petition filed. Opp. 1–3.

Filing errors can occur. But no credible prejudice to AVX has been called to our attention, and none is remotely apparent here. AVX had

Dr. Randall's declaration, albeit unsigned, when the Petition was filed, in time to prepare a Preliminary Response. Presidio submits with its motion a properly executed copy of the declaration of Michael Randall. Ex. 1014, Appendix B (executed signature page dated May 24, 2015, before the June 3, 2015, petition filing date) and C (declaration with executed signature page).

Our Rules require the efficient administration of *inter partes* review cases. For example, 37 C.F.R. § 42.1(b) dictates that Part 42 of 37 C.F.R. "shall be construed to secure the just, speedy and inexpensive resolution of every proceeding." Furthermore, 37 C.F.R. § 42.5(b) provides that "[t]he Board may waive or suspend a requirement of . . . [part] 42 and may place condition on the waiver or suspension." We may accept a paper filed out-of-time "upon a Board decision that consideration on the merits would be in the interests of justice." 37 C.F.R. § 42.5(c)(3). Also relevant is 35 U.S.C. § 26 which authorizes the Director to provisionally accept "a defective execution, provided a properly executed document is submitted within such times as may be prescribed." *See In re Bennett*, 766 F.2d 524 (Fed. Cir. 1985) (en banc) (applying § 26 to permit a corrected reissue oath to be filed after a two-year statutory deadline); *Dietzel v. Commissioner*, 1976 WL 21207, 200 USPQ 665 (D. D.C. 1976); and *Neergaard v. Dann*, 1976 WL 21031, 198 USPQ 525 (D. D.C. 1976).

Issues, such as AVX's disagreement prior to the time a preliminary response is due over an unsigned declaration, when Presidio's counsel provided an explanation for the error and we provided the parties an opportunity to resolve the dispute without Board invention (Papers 8 and 9), result in unnecessary expenses on the part of the parties and burden the Board.

Inadvertent mistakes generally not affecting the merits of a case can happen, and we expect the parties to address them amicably. In the future, our hope is that the parties and the Board will not have to consider motions to correct technical mistakes that can be resolved by way of a stipulation.

IT IS:

ORDERED that Presidio's motion is granted; and

FURTHER ORDERED that Presidio shall replace current Exhibit 1009 with an executed copy of Dr. Randall's declaration (Appendix C to Ex. 1014).

IPR2015-01332 (Patent 6,144,547)

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