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Paper 81 (IPR2014-00041)
Paper 75 (IPR2014-00043)
Paper 74 (IPR2014-00051)
Paper 79 (IPR2014-00054)
Paper 67 (IPR2014-00055)
Entered: September 5, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GEA PROCESS ENGINEERING, INC.,
Petitioner,

v.

STEUBEN FOODS, INC.,
Patent Owner.

Cases¹

IPR2014-00041 (Patent 6,945,013 B2)
IPR2014-00043 (Patent 6,475,435 B1)
IPR2014-00051 (Patent 6,209,591 B1)
IPR2014-00054 (Patent 6,481,468 B1)
IPR2014-00055 (Patent 6,536,188 B1)

Before RAMA G. ELLURU, BEVERLY M. BUNTING, and
CARL M. DEFRANCO, *Administrative Patent Judges*.

ELLURU, *Administrative Patent Judge*.

ORDER

¹ This order addresses issues raised in all five cases. We exercise our discretion to issue one order to be filed in each case. The parties, however, are not authorized to use this style heading in subsequent papers.

IPR2014-00041 (Patent 6,945,013 B2)
IPR2014-00043 (Patent 6,475,435 B1)
IPR2014-00051 (Patent 6,209,591 B1)
IPR2014-00054 (Patent 6,481,468 B1)
IPR2014-00055 (Patent 6,536,188 B1)

A conference call in IPR2014-00041, IPR2014-00043, IPR2014-00051, IPR2014-00054, and IPR2014-00055 was held on September 3, 2014, among respective counsel for Petitioner, GEA Process Engineering, Inc., and Patent Owner, Steuben Foods, Inc., and Judges Elluru, DeFranco, and Bunting.

On August 13, we authorized the parties to file briefing regarding whether Petitioner identified all real-parties-in-interest and what relief should be granted if we determined that Petitioner did not identify all real-parties-in-interest, and limited each party's brief to 15 pages. IPR2014-00041, Paper 62 at 3². During the September 3 teleconference, Patent Owner brought to our attention that Petitioner's Opposition to Patent Owner's Motion Concerning Petitioner's Failure to Identify All Real Parties in Interest included Appendix A, which was attached to Petitioner's 15-page brief. *Id.* at Paper 72. Appendix A includes Petitioner's responses to Patent Owner's Statement of Facts (*id.*), which Patent Owner contends impermissibly contains argument. A review of Appendix A persuaded us that it does indeed contain argument in contravention of 37 C.F.R. § 42.24(c) (excluding in page limits a listing of facts which are admitted, denied, or cannot be admitted or denied). Petitioner's responses to each of Patent Owner's Statement of Facts go beyond the scope of what is excluded in the page count under Rule 42.24(c). We authorized Petitioner to refile its

² All references to papers are to the IPR2014-00041 case, unless indicated otherwise.

IPR2014-00041 (Patent 6,945,013 B2)
IPR2014-00043 (Patent 6,475,435 B1)
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IPR2014-00055 (Patent 6,536,188 B1)

Oppositions by the close of business on September 4, 2014, to comply with the 15 page limit authorized by us.

Patent Owner next argued that a statement in Petitioner's Opposition to Patent Owner's Motion to Amend in IPR2014-00054 (Paper 59 at 7)³ was inconsistent with another statement in Exhibit 2090, page 10, which Patent Owner alleged was made by Petitioner's sister company. Our review of the relevant statements does not reveal that they are inconsistent, and thus, we do not reach other issues relating to whether Petitioner should have produced Ex. 2090 as "routine" discovery pursuant to Board Rules. *See* 37 C.F.R. § 42.51(b)(1)(iii) ("[u]nless previously served, a party must serve relevant information that is inconsistent with a position advanced by the party during the proceeding concurrent with the filing of the documents or things that contains the inconsistency.").

Petitioner brought to our attention that Patent Owner's Replies in Support of its Motions to Amend in IPR2014-00041 and IPR2014-00054 exceeded the 5 page limit in contravention of 37 C.F.R. § 42.24(c)(2). We authorized Patent Owner to refile these Replies in IPR2014-00041 and IPR2014-00054 by Friday, September 5, 2014 to comply with the 5 page limit required by Rule 42.24(c)(2).

The parties agreed to meet and confer regarding a stipulation to extend Due Dates 4 and 5 of the current Scheduling Orders, which stipulation must be filed with the Board.

³ Patent Owner asserted that the same alleged inconsistency was made in IPR2014-00041.

IPR2014-00041 (Patent 6,945,013 B2)
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IPR2014-00055 (Patent 6,536,188 B1)

We further authorized Patent Owner to file, in all five cases, a 5 page Reply in support of its Motion Concerning Petitioner's Failure to Identify All Real Parties in Interest. We did not set a due date for this Reply. We instruct the parties to meet and confer as to a mutually agreeable due date for this Reply, and to notify us of the agreed upon date by filing a stipulation.

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner is authorized to refile its Opposition to Patent Owner's Motion Concerning Petitioner's Failure to Identify All Real Parties, in all five cases, by September 4, 2014, to comply with the 15 page limit authorized by us;

ORDERED that Petitioner's current Opposition to Patent Owner's Motion Concerning Petitioner's Failure to Identify All Real Parties, filed in all five cases are expunged from the record (IPR2014-00041, Paper 72; IPR2014-00043, Paper 70; IPR2014-00051, Paper 69; IPR2014-00054, Paper 70; and IPR2014-00055, Paper 62);

ORDERED that Patent Owner is authorized to refile Replies in Support of its Motions to Amend in IPR2014-00041 and IPR2014-00054 by Friday, September 5, 2014 to comply with the 5 page limit required by 37 C.F.R. § 42.24(c)(2);

ORDERED that Patent Owner's current Replies in Support of its Motions to Amend in IPR2014-00041 and IPR2014-00054, as well as the accompanying motions to seal, are expunged from the record (IPR2014-00041, Papers 75, 76, and 77; IPR2014-00054, Papers 73, 74, and 75);

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IPR2014-00055 (Patent 6,536,188 B1)

ORDERED that the parties meet and confer regarding a stipulation to extend Due Dates 4 and 5 of the current Scheduling Orders in all five cases, which stipulation must be filed with the Board;

ORDERED that Patent Owner is authorized, in all five cases, to file a 5 page Reply in support of its Motion Concerning Petitioner's Failure to Identify All Real Parties in Interest; and

ORDERED that the parties meet and confer as to a mutually agreeable due date for Patent Owner to file in all five cases its Reply in support of its Motion Concerning Petitioner's Failure to Identify All Real Parties in Interest, and to notify the Board of the agreed upon date by filing a stipulation.

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