

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SCHOTT GEMTRON CORPORATION,
Petitioner,

v.

SSW HOLDING COMPANY, INC.,
Patent Owner.

Case IPR2014-00367
Patent 8,286,561 B2

Before JUSTIN T. ARBES, PHILIP J. HOFFMANN, and
GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

ARBES, *Administrative Patent Judge*.

DECISION
Petitioner's Motion to Correct Filing Date
37 C.F.R. § 42.5

Petitioner filed a motion to correct the filing date accorded to its Petition in this proceeding. Paper 22 (“Mot.”). Patent Owner was authorized to file an opposition by September 4, 2014, but did not do so. *See* Paper 21 at 5. For the reasons stated below, Petitioner’s motion is *granted*.

Petitioner filed its Petition, along with Exhibits 1101–1109, in the Patent Review Processing System (PRPS) on January 18, 2014. Petitioner listed in its exhibit list that Exhibit 1109 was the “Declaration of Chris B. Schechter,” *see* Paper 2 at v, but the version of Exhibit 1109 filed on January 18, 2014 was a copy of U.S. Patent Application Publication No. 2004/0202872 A1, not a declaration. Petitioner subsequently filed Mr. Schechter’s declaration, also numbered as Exhibit 1109, on January 21, 2014. The Petition was accorded a filing date of January 18, 2014. Paper 3. Because the Petition as filed originally did not include a copy of Mr. Schechter’s supporting declaration as required by 35 U.S.C. § 312(a)(3)(B), we ordered that the Petition be accorded a filing date of January 21, 2014. Paper 21 at 3–4.

Petitioner argues in its motion that the Petition should be accorded a filing date of January 18, 2014, because the filing of the incorrect version of Exhibit 1109 was a clerical error. Mot. 3–5. Petitioner provides a declaration from its counsel describing the actions he took in filing the Petition. Ex. 1114. Petitioner’s counsel states that he inadvertently labeled two files as Exhibit 1109, and uploaded the incorrect version to PRPS by mistake. *Id.* ¶¶ 3–4. Petitioner’s counsel further explains that after discovering the error, he contacted the Board on the next business day (January 21, 2014) and filed the correct version of Exhibit 1109. *Id.* ¶¶ 6–8.

Based on our review of the facts as set forth in the declaration of Petitioner's counsel, we are persuaded that uploading the incorrect version of Exhibit 1109 was a clerical error and that it would be appropriate under the circumstances to correct the filing date accorded to the Petition. The record supports Petitioner's position that it meant to file Mr. Schechter's declaration, as the exhibit list and body of the Petition reference the declaration as Exhibit 1109 throughout. *See* Paper 2 at v, 20, 23, 24, 36, 38, 44. Further, Petitioner served Patent Owner with a copy of Mr. Schechter's declaration on January 18, 2014, as Patent Owner acknowledged during a previous conference call. *See id.* at 59 (certificate of service); Paper 21 at 2–3; Ex. 1114 ¶ 5. Similar errors have been found correctable in other proceedings, upon a sufficient showing from the filing party that the error was clerical in nature. *See, e.g., Conmed Corp. v. Bonutti Skeletal Innovations LLC*, IPR2013-00624, slip op. (PTAB Feb. 21, 2014) (Paper 18); *Syntroleum Corp. v. Neste Oil Oyj*, IPR2013-00178, slip op. (PTAB July 22, 2013) (Paper 21); *ABB Inc. v. Roy-G-Biv Corp.*, IPR2013-00063, slip op. (PTAB Jan. 16, 2013) (Paper 21).

Finally, we remind the parties of the need to review documents filed in PRPS to ensure that they are correct, and to notify the Board and the other party promptly if any error occurs.

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's motion (Paper 22) to correct the filing date accorded to its Petition is *granted*;

FURTHER ORDERED that the Petition is accorded a filing date of January 18, 2014; and

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FURTHER ORDERED that the original version of Exhibit 1109 filed on January 18, 2014 (U.S. Patent Application Publication No. 2004/0202872 A1) is expunged from the record of this proceeding.

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