

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CBS INTERACTIVE INC., THE NEW YORK TIMES COMPANY,
G4 MEDIA LLC, and BRAVO MEDIA, LLC.
Petitioners,

v.

HELFERICH PATENT LICENSING, LLC, and WIRELESS SCIENCE, LLC,
Exclusive Licensee and Patent Owner.

Case IPR2013-00033
Patent 7,155,241

Before SCOTT R. BOALICK, KEVIN F. TURNER, and, JONI Y. CHANG,
Administrative Patent Judges.

CHANG, *Administrative Patent Judge.*

DECISION
Request for Rehearing
37 C.F.R. § 42.71(d)

Exclusive Licensee Helferich Patent Licensing, LLC and Patent Owner Wireless Science, LLC (collectively “Helferich”) request rehearing of the Order expunging noncompliant papers. Paper 78. The request for rehearing is *denied*.

The Leahy-Smith America Invents Act created new administrative trial proceedings, including *inter partes* review, as an efficient, streamlined, and cost-effective alternative to district court litigation. Pursuant to 35 U.S.C. § 316(b), rules for *inter partes* review proceedings were promulgated to take into account the “regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings.” The promulgated rules are to “be construed to secure the just, speedy, and inexpensive resolution of every proceeding.” 37 C.F.R. § 42.1(b).

Furthermore, 35 U.S.C. § 316(a)(6) requires the Director to “prescribe regulations prescribing sanctions for . . . abuse of process, or any other improper use of the proceeding, such as to harass or *to cause unnecessary delay or an unnecessary increase in cost of the proceeding.*” (Emphasis added.) Pursuant to that statutory mandate, the Director promulgated 37 C.F.R. § 42.12 to provide that the Board may impose a sanction—for failure to comply with an applicable rule or order—that includes expunging a paper. In that regard, 37 C.F.R. § 42.7 also provides that the Board may expunge any paper that is not authorized or that is filed contrary to a Board order.

On July 11, 2013, the Board entered an Order (Paper 62) *denying* Helferich’s request for authorization to file a motion to submit supplement information—namely preexisting documentary evidence and new testimony from the sole inventor, Mr. Helferich, and his colleague, Mr. Schwartz. The preexisting

documental evidence was said to corroborate certain facts alleged in a declaration that was submitted previously with Helferich's patent owner response. Although 37 C.F.R. § 42.123(b) permits late submission of supplemental information in special circumstances, a party—seeking to submit supplemental information more than one month after the date the trial is instituted—*must request authorization* to file a motion to submit the supplemental information. In addition, 37 C.F.R. § 42.20(b) provides that *a motion will not be entered without Board authorization*.

Subsequently, Helferich filed a paper purported to be a request for rehearing of the Order (Paper 62), accompanied by three exhibits, that amounted to a motion to submit supplement information in violation of the Board's Order (Paper 62) and 37 C.F.R. §§ 42.20(b), 42.71(d), and 42.123(b). Paper 65 and Exhibits 2057-2059. Notably, those three exhibits included the preexisting documentary evidence and new testimony of Mr. Helferich and Mr. Schwartz—the same evidence that Helferich requested authorization to file, which the Board denied (Paper 62). While 37 C.F.R. § 42.71(d) permits a party to file a request for rehearing, it is not an opportunity for the party to file new arguments and evidence, especially those that were denied in an Order.

Consequently, the Board entered an Order (Paper 68) and expunged Helferich's noncompliant paper and exhibits (Paper 65 and Exhibits 2057-2059), pursuant to 37 C.F.R. § 42.7. The Board further advised Counsel for Helferich to review the trial rules carefully.

Yet, Helferich's very next filing again failed to comply with the rules. Paper 69. Notably, Helferich's second noncompliant paper (Paper 69) contained five footnotes with single spacing, including one footnote that was almost half of

the page, in violation of 37 C.F.R. § 42.6(a) (double spacing must be used and there is no exception for footnotes). The Board again expunged Helferich's noncompliant paper (Paper 69), pursuant to 37 C.F.R. § 42.7. *See also* 37 C.F.R. § 42.12.

On July 23, 2013, Helferich filed a third paper (Paper 70), purported to be a request for rehearing of the Order (Paper 62), in violation of 37 C.F.R. § 42.71(d). In particular, Helferich's third paper (Paper 70) was *filed untimely*. Helferich did not attempt to seek an extension of time prior to filing that paper. *As no extension of time was requested or granted*, the Board entered an Order (Paper 71) expunging Helferich's noncompliant paper (Paper 70), pursuant to 37 C.F.R. § 42.7. *See also* 37 C.F.R. § 42.12.

Helferich filed the instant request for rehearing of the Board's Order (Paper 71) expunging the noncompliant papers (Papers 69 and 70). Paper 78. In the request, Helferich does not disagree that those papers—as well as its original patent owner response (Paper 47) and its first alleged request for rehearing (Paper 65)—were filed in violation of the rules. *Id.* at 10-12. Rather, Helferich in essence argues that it “mistakenly,” but “in good faith,” believed that it was following the proper procedure when it was filing each of the papers. *Id.*

We are not persuaded by Helferich's arguments in view of the totality of the circumstances. At best, Helferich's arguments possibly could have merit if each noncompliant paper was viewed individually as a first improper filing. However, earlier in this proceeding, Helferich's original patent owner response was determined to be at least 20 pages over the 60-page limit, in violation of 37 C.F.R. § 42.24, and the Board permitted Helferich to file a substitute patent owner

response and late supplemental expert declaration (Paper 49). As such, the expunged noncompliant papers (Papers 69 and 70) are not Helferich's first improper filings. In fact, the expunged noncompliant papers (Papers 69 and 70) were filed in violation of the rules after the Board expunged Helferich's earlier paper (Paper 65), purported to be a request for rehearing, and advised Counsel for Helferich to observe the trial rules carefully.

Upon consideration of Helferich's arguments, we are not convinced that any matter regarding our determination to expunge the noncompliant papers (Papers 69 and 70) had been misapprehended or overlooked. As the Board reminded Counsel, improper filings cause unnecessary delays and costs as well as create a burden on the Board and the parties, which frustrate the statutory and regulatory goals, and the Board's ability to complete a proceeding timely. Pursuant to 37 C.F.R. §§ 42.7, and 42.12, the Board, exercising its discretion, determines the treatment of each improper filing. It is not an abuse of discretion to have made a determination with which a party disagrees.

In view of the foregoing, Helferich's request for rehearing is *denied*.

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