

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTERNATIONAL INTERNET TECHNOLOGIES, LLC and  
RED ROCK INVESTMENTS, LLC,  
Petitioner,

v.

SWEEPSTAKES PATENT COMPANY, LLC,  
Patent Owner.

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Case CBM2015-00105 (Patent 5,569,082)  
Case CBM2015-00106 (Patent 5,709,603)<sup>1</sup>

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Before TRENTON A. WARD, STACEY G. WHITE,  
and ROBERT A. POLLOCK, *Administrative Patent Judges*.

POLLOCK, *Administrative Patent Judge*.

ORDER  
*Conduct of the Proceeding*  
37 C.F.R. § 42.5

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<sup>1</sup> This Decision addresses issues that are common to each of the above-referenced cases. We, therefore, issue a single Decision that has been entered in each case. The parties are hereby advised that they may use this style caption when filing a single paper in multiple proceedings, provided that such caption includes a footnote attesting that “the word-for-word identical paper is filed in each proceeding identified in the caption.”

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CBM2015-00106 - Patent 5,709,603

A conference call was held on February 29, 2016, between Judges Ward, White, and Pollock, and respective counsel for the parties, Michael J. LaBrie, Ashley B. Summer for Petitioner, and Jerold I. Schneider for Patent Owner. Petitioner, via a February 24, 2015, email communication to the Board, requested a conference call to discuss issues related to Patent Owner's Motion to Exclude Evidence (Paper 21)<sup>2</sup> and the second Declaration of Stacy Friedman (Ex. 2042) submitted in connection with that motion.

Petitioner requests that we strike or expunge Patent Owner's Motion to Exclude Evidence (Paper 21) as non-compliant under 37 C.F.R. § 42.64(b), which requires that a motion to exclude evidence be predicated on objections of record, and that any such objection "must be served within five business days of service of evidence to which the objection is directed." Counsel for Petitioner, Mr. LaBrie, argues that discovery is now closed; that failure to strike or expunge Patent Owner's Motion to Exclude Evidence (Paper 21) would be prejudicial because Petitioner would be forced to respond to an improperly filed motion; that the Patent Owner's motion broadens the scope of arguments; and that Petitioner would be forced to incur the costs associated with responding to the substance of the motion, including any additional deposition of Stacy Freidman.

Counsel for Patent Owner, Mr. Schneider, admits that Patent Owner's Motion to Exclude Evidence (Paper 21) is non-compliant under 37 C.F.R. § 42.64(b) because of a docketing mistake and subsequent human error. Mr.

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<sup>2</sup> For convenience, we refer to papers as numbered in CBM2015-00105. The equivalent motion in CBM2015-00105 is filed as Paper 23.

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Schneider argues, however, that pursuant to 37 C.F.R. § 42.5(b), the Board has discretion to waive or suspend the rule and place conditions on any such waiver or suspension. Mr. Schneider further argues that absent Patent Owner's failure to timely serve objections prior to filing Patent Owner's Motion to Exclude Evidence (Paper 21), Petitioner would have incurred the same costs of responding substantively to that motion. Accordingly, Patent Owner requests that the Board waive the service requirement of 37 C.F.R. § 42.64(b); allow Petitioner to respond to Patent Owner's Motion to Exclude Evidence (Paper 21) on the merits; and permit a second deposition of Stacy Freidman outside of the regular discovery period.

While we take no position at this time as to the merits of the motions to exclude before us, we find that the interests of justice favor Patent Owner's requests to waive Rule 42.64(b).<sup>3</sup>

#### ORDER

Accordingly, it is

ORDERED that solely in connection with Patent Owner's Motion to Exclude Evidence (Paper 21), Patent Owner's failure to comply with the service requirement of 37 C.F.R. § 42.64(b) is waived;

ORDERED that Petitioner may respond on the merits to Patent Owner's Motion to Exclude Evidence (Paper 21) on or before March 25, 2016;

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<sup>3</sup> As a secondary matter, Mr. Schneider requested guidance regarding whether a response was required to Petitioners' Notice of Objections to Evidence Pursuant to 37 C.F.R. §42.64 (Paper 26). No response is required.

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ORDERED that Petitioner may, at a time and place convenient to the parties, re-depose Stacy Freidman, said deposition limited to the subject matter set forth in Exhibit 2042;

FURTHER ORDERED that Patent Owner shall bear the reasonable costs of any re-deposition of Stacy Freidman.

PETITIONER:

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