
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LUV N' CARE, LTD.,

Petitioner,

V.

MICHAEL L. MCGINLEY,

Patent Owner.

Patent No. 8,636,178

Filing Date: October 22, 2008

Issue Date: January 28, 2014

Title: FLEXIBLE PANEL PITCHER

MOTION TO ASSIGN FILING DATE

Inter Partes Review No.: IPR2017-01216

This motion was authorized in accordance with 37 C.F.R. §42.20 by an email dated April 11, 2017 from Supervisory Paralegal Andrew Kellogg. A copy of the email authorization is attached as Exhibit B to the Bailey Affidavit submitted herewith (Exhibit 1011).

Petitioner filed its Petition seeking to institute an *Inter Partes* Review of U.S. Patent No. 8,636,178 on March 30, 2017 using the Patent Trial and Appeal Board's electronic filing system. Bailey Aff. ¶ 3, Ex. 1011. The Petition was assigned IPR Review No. IPR2017-01216. Payment of \$23,000.00 was made from deposit account number 505393 using the PTAB E2E system's payment site. Bailey Aff. ¶ 4, Ex. 1011. A receipt for that payment was received electronically by Petitioner on March 30, 2017 at 17:48:16 and a copy is attached as Exhibit A to the Bailey Affidavit submitted herewith. Bailey Aff. ¶ 5, Ex. 1011. Petitioner was informed that the payment was not "processed" by the PTAB E2E payment system due to an internal computer issue. Bailey Aff. ¶ 6, Ex. 1011. Petitioner was further informed that in order to obtain the filing date of March 30, 2017, Petitioner needed to reinitiate the payment procedure and file a motion seeking obtain the earlier filing date. Bailey Aff. ¶ 6, Ex. 1011. Petitioner was expressly advised that in order to receive the benefit of the earlier filing date, Petitioner would need to file a motion seeking to assign IPR2017-01216 a filing date of

March 30, 2017. Bailey Aff. ¶ 6, Ex. 1011. Petitioner reinitiated payment and received a filing date of April 11, 2017, and this motion followed.

Petitioner seeks an order of the Board assigning the filing date of March 30, 2017 to this IPR2017-01216. Petitioner properly filed its petition for *inter partes* review, tendered full payment through its deposit account that was sufficiently funded and otherwise complied with all the IPR filing requirements. But for an internal computer error by the PTAB E2E fee processing system, Petitioner would have been assigned a filing date of March 30, 2017. As the error was due entirely to the actions and inactions of the PTO and through no fault of Petitioner, there is good cause shown that Petitioner should be assigned the March 30, 2017 filing date. Petitioner respectfully requests that the Board grant the motion and assign IPR2017-01216 a filing date of March 30, 2017.

Respectfully submitted this 11th day of April 2017.

By: /s/Robert M. Chiaviello, Jr.
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e)(4) and 42.105, the undersigned certifies that a copy of the foregoing Motion was served via Federal Express on the Patent Owner at the following addresses:

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Dated this 11th day of April, 2017.

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