

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

ASKELOADDEN LLC,  
Petitioner,

v.

PURPLE LEAF, LLC,  
Patent Owner.

---

Case IPR2016-01720 (Patent 8,527,407 B1)  
Case IPR2016-01721 (Patent 8,527,407 B1)  
Case IPR2016-01722 (Patent 8,744,963 B1)<sup>1</sup>

---

Before BART A. GERSTENBLITH, JAMES A. TARTAL, and  
BRIAN P. MURPHY, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

DECISION

Denying Motion to Withdraw;  
Amending Scheduling Order  
*37 C.F.R. §§ 42.5(a), 42.10(e)*

---

<sup>1</sup> This Order addresses issues that apply to each of the three cases. We, therefore, exercise our discretion to issue one Order to be filed in each of the cases. The parties are not authorized to use this heading style in their papers.

IPR2016-01720 (Patent 8,527,407 B1)  
IPR2016-01721 (Patent 8,527,407 B1)  
IPR2016-01722 (Patent 8,744,963 B1)

## I. DISCUSSION

Counsel for Patent Owner Purple Leaf, LLC (“Counsel”) initially contacted the Board on May 31, 2017, to seek authorization to withdraw, one week before the due date for Patent Owner’s Response—June 7, 2017. By Order dated June 7, 2017, we authorized Counsel to file a motion to withdraw by June 13, 2017, and provided Petitioner an opportunity to respond by June 19; also, the Order extended the due date for Patent Owner’s Response until July 7, 2017, and extended the due date for Petitioner’s Reply until October 13, 2017. Paper 14, 3–4.<sup>2</sup>

Counsel filed a Motion to Withdraw as Counsel of Record (Paper 15, “Motion” or “Mot.”) pursuant to 37 C.F.R. § 42.20(b). A Declaration of Ben Bedi (Paper 16, “Bedi Dec.”) was filed in support of the Motion.

The Motion cites 37 C.F.R. § 11.116(b)(1), (4), (5), (6), and (7) as reasons for withdrawal. Mot. 6 (citing Bedi Dec. ¶ 11). Additionally, the Motion states that “further representation of [Patent Owner] will violate [Counsel’s] . . . duties of candor and other such related duties to the U.S.P.T.O.” *Id.* (citing Bedi Dec. ¶ 8).

Counsel contends that Patent Owner will not be prejudiced by its withdrawal in light of the previous extension of the due date for Patent Owner’s Response. *Id.* at 7 (citing Bedi Dec. ¶ 19). Counsel asserts that Patent Owner “is in at least as good of a position as it was on May 31, 2017,” when Counsel requested Patent Owner’s consent for withdrawal and advised Patent Owner to seek new counsel. *Id.* at 7 (citing Bedi Dec. ¶ 19). Counsel contends that our extension of time “provided time sufficient for

---

<sup>2</sup> Citations are to IPR2016-01720 unless otherwise indicated.

IPR2016-01720 (Patent 8,527,407 B1)  
IPR2016-01721 (Patent 8,527,407 B1)  
IPR2016-01722 (Patent 8,744,963 B1)

[Patent Owner] to find and engage new counsel and for new counsel to come up to speed, *i.e.*, to do as much work as [Counsel] had done by May 31, 2017, and file the Patent Owner Responses by the new deadline.” *Id.* (citing Bedi Dec. ¶ 19). Nonetheless, Counsel requests that we extend the due date for Patent Owner’s Response by an additional 31 days to “avoid even the appearance of prejudice.” *Id.* Counsel indicates it advised Patent Owner that if the Motion is denied due to potential prejudice concerns, Counsel would seek withdrawal again, after Patent Owner’s Response is filed. *Id.* at 6 (citing Bedi Dec. ¶ 6).

Counsel indicates that our Order did not provide for an opportunity for Patent Owner to file a paper in response to the withdrawal request, but Counsel indicates that Patent Owner did not respond to an inquiry by Counsel as to whether Patent Owner desired to be heard separately. *Id.* at 7. Counsel, however, states that Patent Owner objects to the requested withdrawal and requests an additional six-month extension to file its Patent Owner Response if the Motion is granted.<sup>3</sup> Petitioner did not file an opposition to the Motion.

We reviewed the Motion in its entirety as well as the accompanying Bedi Declaration and exhibits. We are cognizant of the competing interests involved in the present dispute and place a high premium on avoiding undue prejudice to Patent Owner. At this stage of the proceeding, we are under a statutory requirement to issue a final written decision by February 27, 2017, one year after notice of our institution decision. *See* 35 U.S.C. § 316(a)(11);

---

<sup>3</sup> Even though the Motion indicates that Patent Owner did not respond to counsel’s inquiry, Patent Owner apparently conveyed the desire for a six-month extension.

IPR2016-01720 (Patent 8,527,407 B1)

IPR2016-01721 (Patent 8,527,407 B1)

IPR2016-01722 (Patent 8,744,963 B1)

*see also* 37 C.F.R. § 42.100(c). Notably, Counsel contacted us a mere one week prior to the deadline for Patent Owner's Response. At that point in time, Patent Owner and Counsel should have been prepared to file a Patent Owner Response, if at all, within one week. Additionally, our Order granted a 30-day extension of time for filing Patent Owner's Response.

In light of the facts and circumstances presented here, particularly the time-sensitive nature of *inter partes* review proceedings, a desire to avoid undue prejudice to Patent Owner, and the timing of Counsel's initial request to withdraw, Counsel's Motion is denied. We instruct Counsel to inform Patent Owner, again, that Patent Owner should retain new counsel immediately. Additionally, we are sensitive to the upcoming July 4<sup>th</sup> holiday, and, therefore, extend the deadline for filing Patent Owner's Response to July 21, 2017. The adjustments to this due date and others are set forth in the Order below. Further, Counsel may seek authorization by email to renew its Motion after July 21, 2017, should Counsel choose to do so within a reasonable time thereafter.

**As with our prior decision and order, nothing in this Decision, or the Order below, shall be interpreted as authorizing or ordering Counsel for Patent Owner to disclose attorney-client privileged communications or to violate a duty of candor or any other such related duties to the U.S. Patent and Trademark Office.**

IPR2016-01720 (Patent 8,527,407 B1)  
IPR2016-01721 (Patent 8,527,407 B1)  
IPR2016-01722 (Patent 8,744,963 B1)

## II. ORDER

It is hereby:

ORDERED that Counsel for Patent Owner's Motion to Withdraw as Counsel of Record (Paper 15, IPR2016-01720; Paper 15, IPR2016-01721; Paper 16, IPR206-01722) is denied; and

FURTHER ORDERED that the due dates set forth in the Appendix of the Scheduling Order of the present proceeding and as Amended previously are further modified as follows:

DUE DATE 1 ..... July 21, 2017

Patent Owner's Response to the Petition

DUE DATE 2 ..... October 27, 2017

Petitioner's Reply to Patent Owner's Response to the Petition

DUE DATE 4 ..... November 21, 2017

Motion for observation regarding cross-examination of reply witness

Motion to exclude evidence

Request for oral argument

DUE DATE 5 ..... December 5, 2017

Response to observation

Opposition to motion to exclude

DUE DATE 6 ..... December 11, 2017

Reply to opposition to motion to exclude

DUE DATE 7 ..... December 14, 2017

Oral argument (if requested)

IPR2016-01720 (Patent 8,527,407 B1)  
IPR2016-01721 (Patent 8,527,407 B1)  
IPR2016-01722 (Patent 8,744,963 B1)

For PETITIONER:

Frank A. DeLucia  
MERCHANT & GOULD P.C.  
fdelucia@merchantgould.com

Justin J. Oliver  
Stephen K. Yam  
FITZPATRICK, CELLA, HARPER & SCINTO  
joliver@fchs.com  
syam@fchs.com

For PATENT OWNER:

Ben Bedi  
ECOTECH LAW GROUP, P.C.  
ben.bedi@ecotechlaw.com