

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STRIDE RITE CHILDREN'S GROUP, LLC

Petitioner,

v.

SHOES BY FIREBUG LLC

Patent Owner.

Case No. IPR2017-01810

U.S. Patent No. 9,301,574

**MOTION TO STAY PROCEEDINGS IN PENDING
REISSUE APPLICATION**

TABLE OF CONTENTS

I. INTRODUCTION	1
II. THE REISSUE PROCEEDING SHOULD BE STAYED.....	1
A. The Concurrent Proceedings Include Common Issues.....	2
B. Amendments in the ‘288 Reissue Application Would Interfere with this Inter Partes Review Proceeding.....	2
C. The Final Determinations in This Inter Partes Review Proceeding Would Simplify the Issues in Examination of the ’288 Reissue Application	2
III. CONCLUSION.....	3

TABLE OF EXHIBITS

Exhibit 2030	File History of U.S. Patent Application No. 15/944,288
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I. INTRODUCTION

Patent Owner Shoes by Firebug LLC (“Patent Owner”) respectfully requests stay of the pending reissue application of US Patent No. 9,301,574, Reissue Application No. 15/944,288 filed April 3, 2018 (the “’288 reissue application”), until the outcome of the present *Inter Partes* Review proceeding. Under 35 U.S.C. § 315(d) the Director has authority to stay a reissue, and under C.F.R. 41.122(a), the Board may enter an order to effect a stay. When considering whether to stay a concurrent proceeding, the Board considers whether 1) the proceedings include common issues, 2) amendments in one proceeding could interfere with another, and 3) the final determinations in the review proceeding may simplify the issues remaining in the concurrent proceeding. *Hewlett-Packard Co. v. MCM Portfolio LLC*, IPR2013-00217, slip op. at 2–3 (PTAB May 10, 2013) (paper 8). In the present case, all three factors support a stay.

II. THE REISSUE PROCEEDING SHOULD BE STAYED

The ‘288 reissue application was filed earlier this month and it has not yet been examined. No office action has been issued related to the ‘288 reissue application.

A. The Concurrent Proceedings Include Common Issues

The '288 reissue application includes all original claims from the '574 Patent, a *Tanaka*-style claim of intermediate scope, and a new independent claim intended to broaden the original claims' scope. (Ex. 2030 at Preliminary Amendment.) The reissue and this proceeding present a common issue, namely, the patentability of the subject matter recited in claims 1-10 of the '574 patent. Thus, if the reissue is allowed to proceed, the Central Reexamination Unit and the Board could come to inconsistent decisions regarding the patentability of claims 1-10.

B. Amendments in the '288 Reissue Application Would Interfere with this *Inter Partes* Review Proceeding

If the reissue were allowed to proceed in parallel with this proceeding, claims 1-10 could be amended in the reissue proceeding. Upon allowance and issue, those amendments could render moot any final written decision rendered by the Board in this proceeding.

C. The Final Determinations in This *Inter Partes* Review Proceeding Would Simplify the Issues in Examination of the '288 Reissue Application

Conversely, findings by the Board in this proceeding regarding the patentability of claims 1-10 could simplify issues in the '288 reissue proceeding.

For example, the Board's finding may moot either a rejection based on the instituted ground or the Patent Owner's argument in response thereto.

III. CONCLUSION

In the interests of administrative efficiency and to prevent inconsistent results, the '288 reissue application should be stayed pending the final written decision in this proceeding. Patent Owner requests that the Board exercise its discretion under 35 U.S.C. 315(d) and 37 C.F.R. 42.122(a) and order that examination of the '288 reissue application be stayed during this *Inter Partes* Review proceeding.

Respectfully submitted,

Date: April 24, 2018

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies service of this
MOTION TO STAY PROCEEDINGS IN PENDING REISSUE APPLICATION
along with EXHIBIT 2030 on the counsel of record for the Petitioner by filing this
document through the PTAB E2E System as well as delivering a copy via
electronic mail to the following address(es):

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Respectfully submitted,

Date: April 24, 2018

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