

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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E\*TRADE FINANCIAL CORPORATION, E\*TRADE SECURITIES, LLC,  
E\*TRADE BANK, SCOTTRADE, INC., SCOTTRADE FINANCIAL SERVICES,  
INC., TD AMERITRADE HOLDING CORPORATION, and TD AMERITRADE,  
INC.,  
Petitioner,

v.

DROPLETS, INC.,  
Patent Owner.

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Cases<sup>1</sup>  
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IPR2015-00471  
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Before LINDA M. GAUDETTE, MICHAEL R. ZECHER, and  
SCOTT A. DANIELS, *Administrative Patent Judges*.

GAUDETTE, *Administrative Patent Judge*.

DECISION  
Motion to Change the Filing Date  
37 C.F.R. § 42.106

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<sup>1</sup> This Order addresses issues that are the same in both cases. Therefore, we exercise our discretion to issue one Decision to be filed in each case. The parties are not authorized to use this style heading for any subsequent papers. For purposes of clarity and expediency, we refer to the documents filed in Case IPR2015-00470.

## BACKGROUND

On December 19, 2014, Petitioner filed a Motion to Change the Filing Date of its Petition for Inter Partes Review (Paper 9, “Petition”) in the instant proceeding. Paper 11. Petitioner states it was authorized to file this Motion in an email from the Board’s Paralegal Operations Manager, Maria Vignone, sent December 18, 2014 (Ex. 1026). Paper 11, 2. Patent Owner does not oppose this Motion.

In its Motion, Petitioner states that on December 17, 2014, it attempted to file the Petition via the Board’s electronic filing system (“PRPS”). *Id.* However, a Notice on the PRPS web page advised that electronic filing was unavailable, and that parties should send an email to the Board’s Trials mailbox indicating the need to file items on matters having an imposed deadline or statutory due date, such as petitions. *Id.* (citing Ex. 1027). Petitioner states that upon seeking clarification from the Board, it was instructed to file the Petition by email, without an accompanying motion. *Id.* (citing Ex. 1027). Petitioner provides a copy of the email it sent to the Trials mailbox on December 17, 2014, which indicates the Petition was submitted as an attachment to the email, and that paper copies of the Petition and all cited exhibits were served on Patent Owner on December 17, 2014. Ex. 1027. Petitioner states that Ms. Vignone’s December 18, 2014, email (Ex. 1026), sent in response to its December 17, 2014, email submitting the Petition, advised that the Petition, together with a motion to change the filing date thereof, should be filed when the PRPS site became available to receive electronic filings. Paper 11, 3. Petitioner states that it complied with this new instruction by electronically filing the Petition and Motion on December 19, 2014. *Id.* On January 14, 2015, the Board mailed a “Notice of Filing Date Accorded to Petition” (Paper 15) in each of the instant proceedings, according a filing date of December 19, 2014.

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For the reasons discussed below, Petitioners' Motion to Change the Filing Date of the Petition is *granted*.

#### DISCUSSION

A petition for *inter partes* review will not be accorded a filing date until the petition satisfies the following requirements: (1) the petition complies with 37 C.F.R. § 42.104; (2) the petitioner effects service of the petition and supporting evidence on the patent owner at the correspondence address of record as provided in 37 C.F.R. § 42.105(a); and (3) the petition is accompanied by the fee to institute required by 37 C.F.R. § 42.15(a). 37 C.F.R. § 42.106(a); *see also* 35 U.S.C. § 312(a) (specifying requirements for a petition to be considered). The manner of filing a petition is governed, in part, by 37 C.F.R. § 42.6(b)(1), which states that “[u]nless otherwise authorized, submissions are to be made to the Board electronically via the Internet according to the parameters established by the Board and published on the [website] of the Office.” Based on the record before us, Petitioner satisfied all the statutory and regulatory requirements for filing the Petition that were in place on December 17, 2014. Petitioner submitted its Petition via email attachment to the Trials mailbox on December 17, 2014, as instructed by Ms. Vignone, and authorized the Patent Office to charge the required fees to its deposit account. Ex. 1027. Further, Petitioner represents that the Petition and supporting evidence was served on Patent Owner on December 17, 2014, together with paper copies of the emails sent to the Trials mailbox. *See* Paper 11, 2–3; Ex. 1027. Notably, Patent Owner did not oppose this Motion. The December 19, 2014, filing date accorded the Petition was the result of a change in Board filing procedure that was not communicated to Petitioner until December 18, 2014, i.e., after the date on which Petitioner had made

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a good faith effort to comply with the filing instructions it was provided on December 17, 2014.

Accordingly, we grant Petitioner's Motion to Change the Filing Date of the Petition.

#### ORDER

It is, therefore,

ORDERED that Petitioner's Motion to Change the Filing Date accorded to the Petition in each of the instant proceedings is GRANTED;  
and

ORDERED that the Petition in each of the instant proceedings is accorded a filing date of December 17, 2014.

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