

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MPL BRANDS NV, INC.,
Petitioner,

v.

BUZZBALLZ, LLC,
Patent Owner.

IPR2024-01000
Patent 11,932,441 B1

Before KEN B. BARRETT, ERIC C. JESCHKE, and
CYNTHIA M. HARDMAN, *Administrative Patent Judges*.

HARDMAN, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

Petitioner MPL Brands NV, Inc. requests *inter partes* review of all claims (1–20) of U.S. Patent No. 11,932,441 B1 (“the ’441 patent,” Ex. 1001). Paper 1, 1. Petitioner concurrently filed a petition for post-grant review (PGR2024-00035), which also challenges all claims of the ’441 patent. In a Statement Regarding Multiple Petitions, Petitioner explains its belief that the ’441 patent is subject to the provisions of the America Invents Act (“AIA”¹) and is eligible for post-grant review, but “[i]n view of the possibility that Patent Owner disputes that the ’441 patent is an AIA patent, and the Board concludes that the ’441 patent is a pre-AIA patent, Petitioner has filed concurrent PGR and IPR Petitions.” Paper 3, 3. Nevertheless, Petitioner acknowledges that “the ’441 patent would not be eligible for simultaneous post-grant review and *inter partes* review proceedings,” and “requests that the Board institute post-grant review in PGR2024-00035, and accordingly moot *inter partes* review in IPR2024-01000.” *Id.* at 4, n. 1.

Patent Owner BuzzBallz, LLC argues that “as set forth more fully in the Patent Owner Preliminary Response submitted concurrently in PGR2024-00035, the ’441 Patent is a pre-AIA patent.” Paper 7, 4. Patent Owner argues that we should deny institution of this *inter partes* review because Petitioner’s grounds of alleged unpatentability “are insufficient to establish a reasonable likelihood of prevailing.” *Id.*

As discussed in a decision we concurrently issue in PGR2024-00035, we determine that the ’441 patent is an AIA patent (as described in AIA

¹ Leahy-Smith America Invents Act (“AIA”), Pub L. No. 112-29, 125 Stat. 284 (2011).

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§ 3(n)(1)) and is eligible for post-grant review, and we instituted trial in PGR2024-00035. *See* PGR2024-00035, Paper 10.

For AIA patents like the '441 patent, a petition for *inter partes* review “shall be filed after the later of either (1) the date that is 9 months after the grant of a patent; or (2) if a post-grant review is instituted . . . , the date of the termination of such post-grant review.” 35 U.S.C. § 311(c); *see also* 37 C.F.R. § 42.102(a). Here, the '441 patent issued on March 19, 2024 (*see* Ex. 1001, code (45)), and PGR2024-00035 is instituted. Petitioner filed the instant Petition on June 7, 2024. As such, the instant Petition is premature because it was filed within nine months of the grant of the '441 patent and before termination of PGR2024-00035. For this reason, we deny institution of this *inter partes* review.

Given that we deny the instant Petition as premature, we need not address Patent Owner’s arguments directed to the merits of Petitioner’s unpatentability grounds.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is *denied* and no trial is instituted.

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For PETITIONER:

Babak Tehranchi
Marvin Tyler
Kristen Schunter
Daniel Shvodian
Ruben Kendrick
PERKINS COIE LLP
tehranchi-ptab@perkinscoie.com
tyler-ptab@perkinscoie.com
schunter-ptab@perkinscoie.com
shvodian-ptab@perkinscoie.com
kendrick-ptab@perkinscoie.com

For PATENT OWNER:

Greg Webb
Alan Herda
Jason Whitney
Zachary Halbur
Brooke Cohen
Adam Erickson
HAYNES AND BOONE, LLP
greg.webb.ipr@haynesboone.com
alan.herda.ipr@haynesboone.com
jason.whitney.ipr@haynesboone.com
zachary.halbur.ipr@haynesboone.com
brooke.cohen.ipr@haynesboone.com
adam.erickson.ipr@haynesboone.com