

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MIAMI INTERNATIONAL HOLDINGS, INC.; MIAMI INTERNATIONAL  
SECURITIES EXCHANGE, LLC; MIAX PEARL, LLC; AND MIAMI  
INTERNATIONAL TECHNOLOGIES, LLC,  
Petitioner,

v.

NASDAQ ISE, LLC,  
Patent Owner.

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Case CBM2018-00021  
Patent 6,618,707

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**PETITIONER'S RESPONSE TO PATENT OWNER'S  
MOTION TO DISQUALIFY PETITIONER'S COUNSEL**

## EXHIBITS

MIAX-1001	U.S. Patent No. 6,618,707 (“’707 Patent”)
MIAX-1002	Prosecution History of the ’707 Patent
MIAX-1003	Declaration of Dr. Terrence Hendershott (“Dec.”)
MIAX-1004	Order Granting Mot. in Lim. at 2, Chicago Board Options Exchange, Inc. v. International Securities Exchange, LLC, No. 07 C 623 (N.D. Ill. Crim. R. 1.1 Mar. 9, 2013)
MIAX-1005	Ian Domowitz, <i>A Taxonomy of Automated Trade Execution Systems</i> , 12 J. Int’l Money & Fin., 607-631 (1993) (“Domowitz”)
MIAX-1006	Robert A. Schwartz, <i>Reshaping the Equity Markets: A Guide for the 1990s</i> , 22-46 (Richard D. Irwin ed. 1993) (“Schwartz”)
MIAX-1007	Lawrence E. Harris, <i>Liquidity, Trading Rules, and Electronic Trading Systems</i> , 1-58 (Anthony Saunders & Mary Jaffier eds. 1991) (“Harris”)
MIAX-1008	Webster’s New World™ College Dictionary, (3 <sup>rd</sup> ed. 1997) (“Webster’s”)
MIAX-1009	Ian Domowitz, <i>The Double Auction Market: Institutions, Theories, and Evidence</i> , XIV Proc. Workshop on Double Auction Markets, 28-60 (1991) (“Domowitz II”)
MIAX-1010	Allan Grody & Hugues Levecq, <i>Past Present and Future: The Evolution and Design of Electronic Financial Markets</i> (1993)
MIAX-1011	Managing Innovation: Cases from the Services Industries, National Academy Press, 82-107 (Bruce R. Guile & James B. Quinn eds. 1988) (“Keith”)
MIAX-1012	Curriculum Vitae (CV) of Dr. Terrence Hendershott (“Hendershott CV”)

MIAX-1013	Lodewijk O. Petram, <i>The world's first stock exchange: how the Amsterdam market for Dutch East India Company shares became a modern securities market, 1602-1700</i> , Eigen Beheer (2011) ("Petram")
MIAX-1014	The New York Stock Exchange: The First 200 Years, (James Buck ed. 1992) ("Buck")
MIAX-1015	Kenneth D. Garbade and William L. Silber, <i>Technology, Communication, and the Performance of the Financial Markets: 1840-1975</i> , XXXIII No. 3 J. Fin. 819-832 (1978) ("Garbade")
MIAX-1016	U.S. Provisional Application No. 60/106,935 ("707 Provisional")
MIAX-1017	Hans R. Stoll, <i>Principles of Trading Market Structure</i> , 6 J. Fin. Serv. Res. 75-107 (1992) ("Stoll")
MIAX-1018	Philip Carret, THE ART OF SPECULATION, (2007 reprint)(originally published 1927) ("Carret")
MIAX-1019	Joel Hasbrouck et al, <i>New York Stock Exchange Systems and Trading Procedures</i> , NYSE Working Paper #93-01, 1-58 (1993) ("Hasbrouck")
MIAX-1020-1054	RESERVED
MIAX-1055	Declaration of Roger D. Feldman in Support of MIAX's Response to ISE's Motion to Disqualify Petitioner's Counsel
MIAX-1056	10-16-18 Letter of Nasdaq et al. in Opposition to Stay
MIAX-1057	Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rename the Exchange as Nasdaq, ISE, LLC
MIAX-1058	RESERVED

## I. INTRODUCTION

Nasdaq ISE, LLC (“ISE” or “Patent Owner”)<sup>1</sup> seeks to disqualify Fish & Richardson P.C. (“Fish”) even though Fish never represented ISE, and instead spent over a decade in litigation adverse to ISE and the subject patent. Ex. 2009, 2. That adversity led to rulings of non-infringement, invalidity, and millions of dollars in attorneys’ fees in Fish’s client’s favor. *Id.* The sting of these undisputed facts explains why ISE does not want to face Fish in this proceeding, but does not provide a legal basis to deny Petitioner of its chosen counsel, nor does it explain ISE’s prejudicial delay in seeking disqualification. ISE’s motion is frivolous.

There is no dispute that ISE has never been a client of Fish. Ex. 2009, 2. Faced with this dispositive fact, ISE premises its Motion to Disqualify Petitioner’s Counsel (“Motion”) on Fish’s representation of a different and legally distinct entity, Nasdaq, Inc. (“Nasdaq”), from February 1998 to October 2011. Motion, 1; *see also* Exs. 2006, 2007. To state ISE’s argument is to defeat it: ISE seeks to disqualify Fish on the basis of unspecified information allegedly being in the possession of the particular Fish attorneys who, years ago, before ISE was acquired by Nasdaq, performed patent prosecution work for Nasdaq. *Id.*

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<sup>1</sup>On March 17, 2017, International Securities Exchange, LLC filed papers to change its name to “Nasdaq ISE, LLC.” Ex. 1057, 1-3; Ex. 2011, 1; Ex. 1001.

In the instant CBMR proceeding, Petitioner challenges, as invalid under 35 U.S.C. § 101, claims 1-3 and 5-75 of U.S. Patent Number 6,618,707 (“’707 Patent”). The ’707 Patent issued from an application that ISE (not Nasdaq) filed on November 2, 1999, nearly seventeen years before the June 30, 2016 date on which Nasdaq acquired ISE, and which issued to ISE on February 26, 2013, more than three years before that acquisition date. Ex. 1001, 2011, 1. Notably, approximately four years and eight months passed between the October 2011 date on which Nasdaq terminated Fish’s representation, and the June 2016 date on which Nasdaq acquired ISE. Ex. 2009, 3.

As ISE acknowledges, Fish attorneys did not prosecute the ’707 Patent. Motion, 2; *see also* Ex. 1001, 1; Ex. 2009, 2. ISE thus floats the argument that “timeframe” and “technology space” are enough to create a conflict with an entity that was *never* a client: “the issues in this CBMR are substantially related to Fish’s prior prosecution work” for Nasdaq, since “the patent at issue claims inventions in the very same technology space, and has a date of invention during the same timeframe in which Fish represented Nasdaq.” Motion, 2.

Stated concisely, ISE seeks to disqualify Fish from the present CBMR proceeding because Fish attorneys represented Nasdaq during a period of time that ended approximately four years and eight months prior to Nasdaq’s acquisition of ISE, and because the subject matter of the ’707 Patent is allegedly in the “same

technology space” as applications that Nasdaq pursued during that period. Motion, 1-2.

As explained in more detail below, a review of the relevant law only deepens appreciation of the absurdity of ISE’s position. Indeed, even apart from the facts that ISE has never been a client of Fish, that Fish did not prosecute the ’707 Patent, and that the described subject matter of the ’707 patent was fixed in time by ISE’s counsel nearly seventeen years before the June 30, 2016 date on which Nasdaq acquired ISE, it bears emphasis that any confidential information that may have been furnished from Nasdaq to Fish attorneys could not possibly be leveraged to materially advance the legal interests of MIAX in this CBMR proceeding. Quite apart from whatever confidential information might exist within the minds of a handful of screened Fish attorneys regarding Nasdaq’s prosecution of its own patent applications, the present proceeding will be resolved on the basis of a comparison of the publicly available claims of ISE’s ’707 Patent, to publicly available proofs the ’707 Patent’s invalidity.

Indeed, review of the instant CBMR petition, which challenges the remaining claims of the ’707 Patent as invalid under 35 U.S.C. § 101, reveals complete reliance within that petition (i.e., by Fish) on publicly available information, and, of course, it would. A 101 challenge of the type set forth in the instant proceeding’s petition is informed, and can only be informed, by public

information. *See, e.g., Berkheimer v. HP Inc.*, 881 F.3d 1360, 1367-68 (Fed. Cir. 2018) (“[a]ny fact ... that is pertinent to the invalidity conclusion must be proven by clear and convincing evidence”). It should be unsurprising then that, within its 15 pages of requested briefing, ISE has failed to identify anything within the petition that demonstrates reliance on specific Nasdaq confidential information.

Indeed, and as explained in more detail below, the concerns expressed in ISE’s motions are purely speculative, factually baseless, and legally unfounded.

## II. LEGAL STANDARD

USPTO Rule 109(a) precludes counsel from representing a person in “the same or a substantially related matter in which that person’s interests are materially adverse to the interests of [a] former client.” 37 C.F.R. § 11.109(a).

“Matters are ‘substantially related’ for purposes of ... Rule [109(a)] if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.” *Commscope*, IPR2018-00571 Pap. 18 at 4-5 (May 8, 2018); *see also John Crane, Inc. v. Finalrod IP, LLC*, IPR2016-00521 Pap. 5 at 4 (Mar. 29, 2016)(“[w]hether representations are ‘substantially related’ has been interpreted as requiring a showing that the subject matter of the two representations is ‘identical or essentially the same’”).

Disqualification of a party's counsel is resolved on a case-by-case basis, and the moving party bears a heavy burden to show that disqualification is necessary.

*Anderson v. Eppstein*, 59 U.S.P.Q.2d 1280, 1286 (BPAI 2001); Final Rule 77 Fed. Reg. 48,630 (August 14, 2012). The Patent Trial and Appeal Board has been called upon to consider motions to disqualify counsel, and/or requests to authorize filing of the same, in several cases, but has denied the requests to file in most of those cases, and has never once granted a motion to disqualify counsel. See *Commscope*, IPR2018-00571 Pap. 18 (May 8, 2018); *UPL Ltd. v. Agrofresh Inc.*, IPR2017-01919 Pap. 35 (Jun. 13, 2018); *SAP America v. Lakshmi Arunachalam*, CBM2016-00081 Pap. 12 (Nov. 18, 2016); *John Crane*, IPR2016-00521 Pap. 5 at 3 (Mar. 29, 2016); *TD Ameritrade Holding Corp. v. Trading Technologies International, Inc.*, CBM2014-00131 Pap. 10 (Jul. 24, 2014); and *Scentair Technologies, Inc. v. Prolitec, Inc.*, IPR2013-00179 Pap. 9 (Apr. 16, 2013).

In *Commscope*, IPR2018-00571 Pap. 18 (May 8, 2018), the Board considered a motion to disqualify patent owner's counsel based upon their prior representation of petitioner during prosecution of applications that were related to a prior art reference applied in the petition. Despite the breach of an ethical wall, the Board denied petitioner's motion to disqualify because the Board was not convinced that the subject matter of the prior representation, which included exposure to petitioner's confidential information, was substantially related. *Id.*, 5.



In *SAP America v. Lakshmi Arunachalam*, CBM2016-00081 Pap. 12 (Nov. 18, 2016), the Board denied a patent owner's motion for disqualification identifying issues already considered by the Federal Circuit. The Federal Circuit decision noted that members of Sterne Kessler (ISE's counsel) had met with the patent owner regarding potential representation, but that there was no reason to believe that information provided to Sterne would have been relevant in their representation of a different party, in a matter involving different patents. *Lakshmi Arunachalam v. SAP America, Inc.*, No. 15-1424 at \*7-9 (Fed. Cir. Sep. 23, 2016).

### **III. ISE IS NOT A FORMER CLIENT OF FISH & RICHARDSON P.C.**

37 C.F.R. § 11.109(a) precludes counsel from representing a person in “the same or a substantially related matter in which that person's interests are materially adverse to the interests of [a] former client.”

ISE has never been a client of Fish & Richardson P.C. Ex. 2009, 2. Indeed, Fish has a history of adversity to ISE, having represented a competing exchange in an earlier lawsuit that challenged the alleged infringement and validity of the '707 Patent itself. See *CBOE v. International Securities Exchange, LLC*, No. 07-cv-0623 (N.D. Ill.). Ex. 2009, 2.

Moreover, approximately four years and eight months passed between the October 2011 date on which Nasdaq terminated Fish's representation, and the June 2016 date on which Nasdaq acquired ISE. Ex. 2009, 3. And contrary to ISE's

unsupported suggestion otherwise, Nasdaq's 2016 acquisition of ISE does not retroactively make ISE a former client.

For at least these reasons, ISE has failed to demonstrate cause for disqualification. 37 C.F.R. § 11.109(a).

#### **IV. THERE IS NO SUBSTANTIAL RELATIONSHIP**

“Matters are ‘substantially related’ for purposes of ... Rule [109(a)] if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.” *Commscope*, IPR2018-00571 Pap. 18 at 4-5 (May 8, 2018); *see also John Crane, Inc.*, IPR2016-00521 Pap. 5 at 4 (Mar. 29, 2016).

Because ISE is not a former client of Fish, ISE premises its Motion on Fish's representation of a different and legally distinct entity, Nasdaq, Inc., from February 1998 to October 2011. Motion, 1. Specifically, ISE asserts that “the issues in this CBMR are substantially related to Fish's prior prosecution work” for Nasdaq, since Nasdaq is said by ISE to have “entrusted to Fish confidential information ... relating to Nasdaq's strategic approach to its intellectual property and information bearing on the validity of its patents.” Motion, 1-2.

In the instant CBMR proceeding, Petitioner challenges, as invalid under 35 U.S.C. § 101, claims 1-3 and 5-75 of ISE's '707 Patent. As ISE acknowledges,

Fish attorneys did not prosecute the '707 Patent. Motion, 2; *see also* Ex. 1001, 1; Ex. 2009, 2. Indeed, the '707 Patent issued from an application that ISE filed on November 2, 1999, nearly seventeen years before the June 30, 2016 date on which Nasdaq acquired ISE, and which issued to ISE on February 26, 2013, more than three years before that acquisition date. Ex. 1001, 1; Ex. 2011, 1.

The notion that “Nasdaq’s strategic approach to its intellectual property and information bearing on the validity of its patents” is in any way related to the instant challenge to *ISE’s* '707 Patent, let alone substantially related is, therefore, absurd.

Moreover, and even apart from the facts that ISE has never been a client of Fish, that Fish did not prosecute the '707 Patent, and that the described subject matter of the '707 patent was fixed in time by ISE’s counsel nearly seventeen years before the June 30, 2016 date on which Nasdaq acquired ISE, it bears emphasis that any confidential information that may have been furnished from Nasdaq to Fish attorneys could not possibly be leveraged in this CBMR proceeding. Quite apart from whatever confidential information might exist within the minds of a handful of screened Fish attorneys regarding Nasdaq’s prosecution of its own patent applications, the present proceeding will be resolved on the basis of a comparison of the publicly available claims of ISE’s '707 Patent, to publicly available proofs the '707 Patent’s invalidity.

ISE asserts that “[b]ecause patent-eligibility, this sole issue in this CBMR, is evaluated from the time of invention ... the confidential factual information Fish obtained from Nasdaq is material to the issues in this CBMR.” Motion, 11 (citing *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1370 n. 1 (Fed. Cir. 2018)). Yet, a 101 challenge of the type set forth in the Petition is informed, and can only be informed, by public information; indeed, as the Federal Circuit recently reaffirmed, “[a]ny fact ... that is pertinent to the invalidity conclusion must be proven by clear and convincing evidence.” *See Berkheimer*, 881 F.3d 1360, 1367-69.

As such, even setting aside that an ethical wall is in place, and that the attorneys involved in this CBMR proceeding have no knowledge of any information that may have been furnished from Nasdaq to Fish in the past, it is simply not plausible that petitioner’s position with respect to its attempt to invalidate the patent at issue under 35 U.S.C. § 101 could, in any way, be materially advanced by virtue of imputed knowledge relating to the prosecution of different patents on behalf of a different entity. Ex. 1055, 2-5.

Indeed, the ’707 petition does not employ any confidential information, and instead demonstrates the invalidity of the challenged claims under 35 U.S.C. § 101 by applying the two-step subject matter eligibility test set forth in *Alice Corp. v. CLS Bank International*, 134 S. Ct. 2347 (2014). Petition, 1-101. In more detail, the petition first argues (with reference, for example, to the ’707 patent itself and to

published histories of financial trading) that the challenged claims are directed to the abstract idea of trading a financial instrument according to allocation rules.

Petition, 27-84. The petition next argues (with reference, again, to the '707 patent itself, and to technical publications) that the challenged claims do not contain any inventive concept, and instead recite only the performance, by generic computer components, of conventional activities. Petition, 84-99.

It should be unsurprising then that, within its 15 pages of requested briefing, ISE has failed to identify *anything* within the petition that demonstrates reliance by MIAX on Nasdaq's confidential information, and that ISE's Motion is instead purely speculative in conjuring the specter of potential harm that might allegedly follow from screened Fish attorneys having, in years past, performed prosecution work on behalf of Nasdaq. *See, e.g.,* Motion, 11 ("ISE is permitted to propose amended claims in this CBMR ... [s]hould [ISE] exercise this option, the proceeding will include prosecution of a patent that is directed to the same subject matter as those Fish prosecuted for Nasdaq")(citing nothing)<sup>2</sup>.

ISE's speculation is insufficient to show a substantial relationship under Rule 109(a), which instead requires "*a substantial risk* that confidential factual

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<sup>2</sup> ISE mischaracterizes the subject matter of the '707 Patent, which issued from an application that ISE (not Nasdaq) filed in November, 1999. Ex. 1001, 1.

information as would normally have been obtained in the prior representation *would materially advance* the client's position in the subsequent matter” (emphases added). *Commscope*, IPR2018-00571 Pap. 18 at 4-5 (May 8, 2018).

Appropriately, when applying 37 C.F.R. § 11.109(a) in the past, the Board has *never* disqualified counsel. *See Commscope*, IPR2018-00571 Pap. 18 (May 8, 2018); *SAP America v. Lakshmi Arunachalam*, CBM2016-00081 Pap. 12 (Nov. 18, 2016). In the instant proceeding, there is no substantial risk that MIAX’s position in invalidating ISE’s ’707 Patent could be advanced by knowledge of confidential Nasdaq information, even assuming for the sake of argument alone that that information were available to the attorneys who are handling this CBMR on MIAX’s behalf (and it is not). Ex. 1055, 2-5. Indeed, and as noted, the present proceeding will be resolved on the basis of a comparison of the publicly available claims of ISE’s ’707 Patent, to publicly available proofs the ’707 Patent’s invalidity. Nasdaq confidential information is simply inapposite to the inquiry.

As such, for at least this additional reason, ISE has failed to demonstrate cause for disqualification. 37 C.F.R. § 11.109(a).

## **V. ISE IMPROPERLY CONFLATES PROCEEDINGS**

The law governing disqualification of a party’s counsel is clear that motions for disqualification are to be resolved on a case-by-case basis, according to the facts and circumstances of each case; the moving party, moreover, bears a heavy

burden to show that disqualification is necessary. *Anderson v. Eppstein*, 59 U.S.P.Q.2d 1280, 1286 (BPAI 2001); Final Rule 77 Fed. Reg. 48,630 (August 14, 2012); *see also TD Ameritrade*, CBM2014-00131 Pap. 10 (Jul. 24, 2014).

In what amounts to an implicit admission as to its inability to carry its burden based upon the particular facts and circumstances of this CBMR, ISE suggests that “the Board should not consider each of MIAX’s CBMRs in isolation.” Motion, 8. Instead, ISE urges that the Board should adopt findings from Magistrate Judge Arpert’s September 6, 2018 order from district court litigation, and “disqualify Fish from representing MIAX in this CBMR because MIAX’s interests are ‘materially adverse’ to those of Nasdaq, and this CBMR is ‘substantially related’ to Fish’s past representation of Nasdaq.” Motion, 8-9.

ISE’s suggestion is, of course, perfectly incongruent with the analysis that is needed to resolve its Motion, which, without question, must be based upon the facts and circumstances of this case. *Anderson v. Eppstein*, 59 U.S.P.Q.2d 1280, 1286 (BPAI 2001). Just as important, it should be understood that Magistrate Judge Arpert’s findings in the co-pending district court litigation were based upon *a different set of facts and circumstances*.

That case, for example, involves a single complaint that was filed by three entities, including Nasdaq and ISE, and that alleged infringement of seven different patents, in addition to misappropriation of trade secrets. Ex. 2013, 1. Magistrate

Judge Arpert's ruling (which Petitioner has appealed, and which is under review by the District Court), moreover, relied upon a finding of overlap between the trade secret and infringement counts at issue in that case. *See Ex. 2013, 7-8.* In urging the Board to "adopt Judge Arpert's well-supported factual findings that the defense of MIAX is 'necessarily a collaborative effort,'" ISE conveniently neglects to mention the differences that drove the findings in question. Motion, 8-9.

In sum, ISE is urging the Board to disregard the particular facts and circumstances of the instant case, and to disqualify Fish based upon findings relating to a different set of facts of circumstances, from a different case. Motion, 8-9. ISE's suggestion is entirely improper, and should be rejected.

## **VI. ISE'S MOTION IS UNTIMELY**

Over seven months have passed since ISE first raised, in co-pending district court litigation, questions regarding Fish's prior representation of Nasdaq. *Ex. 2014, 3.* Specifically, ISE and the other plaintiffs involved in that proceeding filed notice of a motion to disqualify Fish on March 2, 2018. *Id.*

Notably, attorneys from Fish filed the petition requesting CBMR of the '707 Patent shortly thereafter, on March 23, 2018. *Petition, 100.*

Given this timing, it is reasonable to ask why ISE delayed, for over half a year, the filing of the Motion that is presently under consideration. In its attempt to answer this question, ISE does not assert that new facts have emerged in the



intervening period, and ISE does not assert that it was prevented from requesting the motion earlier in these proceedings. Motion, 13-15.

Instead, ISE notes that “Nasdaq investigated whether any panel of the PTAB had disqualified counsel in a post-grant proceeding,” and that “Nasdaq is unaware of any such decision,” and then explains that “[g]iven the limited guidance on disqualification at the PTAB, Nasdaq waited for a ruling from the district court before approaching the Board.” Motion, 13-14. In other words, mindful of the fact that the Board has never once disqualified counsel, ISE delayed the filing of its Motion, seeking to take advantage of developments in co-pending litigation. As noted in the *Rules of Practice for Trials Before the Patent Trial and Appeal Board*, “[m]otions to disqualify opposing counsel are disfavored because they cause delay and are sometimes abused.” Final Rule 77 Fed. Reg. 48,630 (August 14, 2012). The fact that the Board disfavors motions to disqualify opposing counsel does not excuse ISE’s delay in filing the present Motion.

Further, ISE’s excessive delay is itself evidence that ISE never believed in the existence of a PTAB-implicating conflict, but that ISE seeks to seize upon the district court ruling by Magistrate Judge Arpert, as a matter of gamesmanship. In this regard, it is noteworthy that ISE recently attempted to leverage the mere pendency of its Motion to avoid a stay of the co-pending litigation. Ex 1056, 1-2.

Moreover, the relief sought by ISE – denial of institution, or termination, as signaled during the October 2, 2018 teleconference between the Board and the parties – is itself indicative of the untimeliness of the Motion. Ex. 2004, 5:2-6. Indeed, ISE had opportunity to raise arguments for denial of institution when earlier raising issues to the district court in March, or anytime since, including within its Patent Owner Preliminary Response; ISE declined to raise the particular arguments now under consideration.

ISE asserts that “[g]iven the procedural nature of CBMR, MIAX was not prejudiced by” ISE’s delay. Motion, 14. Contrary to ISE’s assertion, ISE’s delay in filing the present Motion forced MIAX to expend resources both at the beginning of the period of ISE’s delay, and at its end, thereby greatly amplifying the costs involved. ISE’s Motion, moreover, has forced MIAX to focus attention and resources on ancillary matters raised within the Motion, rather than on the true subject of this proceeding: the invalidity of the ’707 Patent.

In light of the above, ISE’s motion is clearly untimely, and should be denied for this additional reason.

## **VII. CONCLUSION**

For the reasons set forth above, ISE has failed to demonstrate cause for disqualification. As such, ISE’s Motion should be denied.

Respectfully submitted,

Date: October 18, 2018

/W. Karl Renner/

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## CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4), the undersigned certifies that on October 18, 2018, a complete and entire copy of this Petitioner's Response to Patent Owner's Motion to Disqualify Counsel and its exhibits were provided via email to the Petitioner by serving the correspondence email address of record as follows:

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