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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91243795
Party	Plaintiff Bitmain Technologies Limited, Antpool Technologies Limited and Beijing Phas-tran Technologies Limited
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Bitmain Technology Limited)	
Antpool Technologies Limited and)	
Beijing Phastran Technologies Limited)	
)	
)	
v.)	
)	Opposition No. 91243795
)	
)	
Shenzhen Mayichuangpin Kejiyouxiangongsi)	

**Plaintiffs’ Counsel’s Mandatory Request to Withdraw as Representative Pursuant to
TBMP Section 513 and Rule 11.116(a)**

The undersigned counsel requests permission to withdraw as counsel in this matter. This request to withdraw is based upon a ground for mandatory withdrawal as set forth in 37 C.F.R. Section 11.116(a). Specifically, 35 Section 11.107 states, in pertinent part:

“A practitioner shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) The representation of one client will be directly averse to another client; or
- (2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner’s responsibilities to another client, a former client... “

After two parties had signed/approved the final settlement agreement with its exhibits referred to in prior papers,¹ the undersigned learned that a USPTO Examiner has cited opposer Phastran's pleaded application for ANTBOX and ANT Design (Serial Number 87786315), as a potential Section 2(d) bar to the registration of opposer Bitmain's application for ANTSPACE and ANT Design (Serial Number 97257026). This appeared to create a potential conflict as, if Phastran's pleaded mark registered, Bitmain's ANTSPACE and Ant Design application could be denied registration.

The undersigned spoke with Office of Enrollment and Discipline to confirm her understanding of the conflict and that if the conflict was not waived by all Opposers, that that the undersigned could no longer represent any of the Opposers. See, 35 Section 11.107 (1) and (2) above. Specifically, by assisting Phastran in obtaining its ANTBOX and ANT HEAD registration, the undersigned could be acting directly adverse to Bitmain and its related company Antpool.²

As the undersigned is not counsel of record for the ANTSPACE and ANT Design application, she was not aware of the potential conflict until July 14, 2022. On that same date, the undersigned counsel first notified the potentially harmed Bitmain and Antpool parties of the conflict; of the ramifications of the conflict under U.S. law, and of the undersigned counsel's need to withdraw due to the conflict absent an express informed signed waiver. Undersigned

¹ For the information of the Board, this opposition was instigated when a US Examiner refused to register the pleaded ANTBOX and Ant design application because of the Defendant's prior pending ANTBOX application Serial No. 87751220. Under the terms of the worldwide settlement, inter alia, each party would coexist under certain conditions that would render the refusal moot.

² The undersigned understands that Bitmain and Antpool are related companies who both use/have applied for or registered the potentially conflicting logo design.

counsel continued to correspond with these parties and also their outside Chinese speaking counsel regarding this, by email and by phone, on July 14, July 18, July 19, 21, 25, 26, 27, 29, 30, August 1, and 2. On August 2, 2022, pursuant to Rule 11.107(b)(4), Bitmain and Antpool advised the undersigned that they would not waive the conflict, that they would retain new counsel, and would not agree to the undersigned continuing to represent Phastran.

On August 4, 2022, the undersigned notified Phastran of the conflict; of the ramifications of the conflict under U.S. law, and of the undersigned counsel's need to withdraw due to the conflict as it could not secure a waiver. On August 8, 2022, Phastran acknowledged the communication and represented it would revert in due course.

The undersigned continued to correspond with all three parties on August 21, 22, and 23, 2022 regarding the procedures for withdrawing, the current deadlines, and that foreign-domiciled parties could not appear pro se but must be represented by U.S. counsel. In this correspondence, the undersigned also represented that while it would request as part of the withdrawal a further suspension so new counsel could be located and enter an appearance on their behalf, there was no guarantee that the Board would suspend. Consequently, the undersigned counsel recommended that each of the parties locate and retain new counsel rather than delay the case.

All parties acknowledged receipt of the correspondence and counsel invited them to contact the undersigned if they had any further questions regarding the matters raised by the conflict.

In the above correspondence, the undersigned also notified and sent reminders and follow up reminders to each of the parties reporting the Board's granting of the motion to substitute and regarding the impending briefing deadlines for Opposers. On September 21 and 22, 2022, the undersigned sent a final reminder to each of the parties of those deadlines and the need of the undersigned to withdraw, absent substitution of new counsel.

As indicated above, in accordance with Rule 11.107(b)(4), the undersigned was advised that this conflict was not waived. Further, on August 2 and September 23, 2022, Bitmain and Antpool expressly advised the undersigned that they had retained new counsel who would be entering an appearance "shortly" and that the undersigned was to take no further action on their behalf other than file the withdrawal and corresponding suspension request.³ As indicated above, on August 4, the undersigned advised Phastran of the conflict and the need to retain new counsel due to the conflict and a final reminder was sent to Phastran on September 21 and 22, 2022. Thus, each party has been allowed time to employ another practitioner.

All papers and property that relate to the proceeding and to which the clients are entitled have been delivered to the clients; and no fees or expenses have been paid in advance and not refunded.

This request is not for purposes of delay but to comply with the USPTO rules on mandatory withdrawal. As noted above, just to prior to the recognition of the possible conflict by the

³ The undersigned does not know the name of this new counsel and despite Bitmain and Antpool's representation, no counsel has yet entered an appearance on behalf of Bitmain and Antpool to the undersigned's knowledge. Thus, this request for withdrawal is being filed.

undersigned, by June 26, 2022, two of the four parties had signed or represented they would sign the worldwide settlement agreement in its final bilateral Chinese and English language form with exhibits, but the conflict has prevented further progress on this case. The undersigned represented three Chinese entities and it took time and many written and oral communications with them and their Chinese speaking outside counsel for them to understand the nature of the USPTO ethical rules, the USPTO procedures and whether to waive the conflict. Indeed, it was represented to the undersigned, that prior to the July 14 communication from the undersigned, none of the Opposers were even aware of the Examiner's citation of one Opposer's application against another. Granting this motion this will allow new counsel to enter an appearance and conclude the case.

Consequently, the undersigned requests that the Board permit the undersigned practitioner to withdraw as counsel for Plaintiffs in this matter and in accordance with the Board's usual practice to suspend this case for thirty days to allow new counsel to be retained and enter an appearance in this matter.

It is believed that this motion satisfies the requirements of the rules for requesting withdrawal as counsel and for requesting a thirty-day suspension. The undersigned practitioner has complied with the requirements of 37 CFR Section 11.116c. In accordance with that rule, this request for permission to withdraw includes a detailed: (1) specification of the basis for the request (the Examiner's office action creating a conflict of interest); (2) a statement that the practitioner has notified the client of the desire to withdraw from employment, and has allowed time for employment of another practitioner; (3) a statement that all papers and property that relate to the

proceeding and to which the client is entitled have been delivered to the client; (4) a statement that any advance payment of fees or expenses that have not been earned or incurred have been refunded or, if appropriate, a statement that no fees or expenses have been paid in advance and not refunded; and (5) proof of service of the request upon the client itself and upon every other party to the proceeding.

Moreover, this request to withdraw from representation is not a subterfuge to obtain an extension or reopening of time that a party would not otherwise be entitled to. The four Chinese parties (One defendant and three Opposers) had negotiated in good faith, agreed on the actual final language, in Chinese and English, of the detailed Worldwide Settlement Agreement, and the Exhibits, and the detailed Settlement Agreement has been signed or accepted in Chinese and English by two of the four parties. However, because of the Examiner's actions, the undersigned cannot, without an informed consent and waiver, continue to represent the Opposers. The settlement agreement is intended to result in the registration of Phastran's pleaded ANTBOX and Ant design application and thus could have a potential impact on Bitmain's ANTSPACE and Ant Design application, unless the Examiner's potential refusal is withdrawn.

In accordance with the Board's usual practice, if the request to withdraw is granted, the undersigned practitioner requests that the Board suspend proceedings and allow the party 30 days in which to appoint a new attorney and enter an appearance. TBMP Section 513

STATUS REPORT

Opposer notes the Board's February 10, 2022 and March 18, 2022 orders denying a further suspension for settlement talks absent detailed reports on the settlement negotiations. See, 54 TTABVUE pp 1-4 and 56 TTABVUE pp 1-2. This request for suspension is not based on

settlement talks, but rather a mandatory request to withdraw due to a conflict of interest. Thus, it is believed that this motion does not require a detailed report on settlement negotiations.

Nonetheless, in an abundance of caution, the undersigned supplies the information required by the Board. Since the Board's March 18, 2022 order, the parties have corresponded by email (except where otherwise indicated). Specifically, the Opposers' counsel and Defendant communicated on March 22, 23, 24, and 25, 2022 (by phone) regarding potentially simplifying the Agreement and March 29, 2022 by email reporting that one Opposer had approved the written Agreement but had requested that the Agreement be written in both Chinese and English to which Defendant agreed. The Opposer's counsel and Defendant's counsel corresponded on April 24 and 25, 2022 by email regarding the filing of the motions to substitute and notices of reliance, and on May 3, 2022 by email when the undersigned forwarded the bilateral Chinese translation of the agreement to the Defendant. Defendant approved the Chinese translation subject to inclusion of a new address for Defendant. Opposers' counsel emailed Defendant's counsel on May 9, 2022, notifying Defendant that all three Opposers had now reviewed and agreed to the final draft of the Chinese English bilateral Agreement and that the exhibits were now being drafted pursuant thereto. Opposers' counsel forwarded by email the first of those exhibits to Defendant's counsel on May 10, 2022, and the parties' counsel corresponded regarding that Exhibit on May 12, and May 14, 2022 and the Exhibit was signed and approved. On May 17 and 20, 2022 Opposers' counsel sent to Defendant's counsel the second exhibit, a draft Contingent Motion to Amend and Dismissal, which Defendant approved. On May 20, 2022, the Chinese translation was edited to reflect current addresses of the parties and correct certain typos. The final agreement and settlement with exhibits were circulated by email to Opposers on June 20, 2022, for signing. By June 26, 2022, the settlement was signed and or

approved for signing by two parties. The settlement would have resolved all issues between the parties.

Opposers' counsel then followed up with the remaining parties as to the signing status from June 23, 24, 26, 29 and July 7 until July 14 when the conflict was discovered and reported.

However, due to the conflict, the undersigned is not aware of whether issues remain between the two unsigned parties and what the timetable is for resolving those issues. Under the USPTO ethical rules, the undersigned could not continue to advise the parties to settlement completion.

Wherefore, the undersigned requests the Board's permission to withdraw as counsel for Opposers and that the case be suspended for thirty days to allow Opposers to locate and retain new counsel and to have such counsel enter an appearance.

Respectfully submitted,

/Carla Calcagno/

Calcagno Law PLLC
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Washington DC 20037
703 386 6500
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Date: October 5, 2022

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a true and complete copy of the foregoing

**Plaintiffs' Counsel's Mandatory Request to Withdraw as Representative Pursuant to
TBMP Section 513 and Rule 11.116(a) and Status Report**

has been served on all parties⁴ by email to:

For Bitmain: ayuan@loeb.com and Lijun.wang01@bitmain.com

For Antpool: aijia.zhang@bitmain.com

For Phastran: bei.zhao@phastran.com, jiayi.lu@phastran.com

For Defendant: mousamuel@whitewoodlaw.com

Date: October 5, 2022

/Carla Calcagno/

Carla Calcagno

⁴ Ayuan@loeb.com and jiayilu@phastran.com are incorrectly listed among the Board's correspondence addressees for Defendant. The Board appears to have added these names to Defendant's service addresses when the Motion to Substitute was filed. The undersigned has asked Defendant's counsel, Mr Shengmao Mu, to file a change of address removing them from his list of persons to serve. For the information of the Board, Mr Yuan is a Chinese speaking outside counsel who represents and assists Bitmain in the trademark prosecution of its pleaded marks, and has assisted by translating for Bitmain in this case, but has not been retained to represent Bitmain or Antpool in this opposition. I have copied him on the service address for translation assurance.