ARE Patent Law Alert:
In Another Win For Firmâ€™s IPR Team, PTAB Confirms its Authority to Deny Untimely Challenges to the Real Party in Interest

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Amster, Rothstein & Ebenstein, LLP attorneys successfully defended against a challenge to the named real party in interest ("RPI") in a series of *inter partes* review ("IPR") proceedings brought by Petitioner First Quality Baby Products, LLC against Patent Owner Kimberly-Clark Worldwide, Inc.'s 8,747,379 B2: IPR2014-01021, -01023, and -01024.

In its decision issued on July 16, 2015, the Patent Trial and Appeal Board ("PTAB") considered whether a challenge to the identified RPIs may be time-barred. The PTAB made clear that, regardless of the continuing requirement for a petitioner to properly identify all RPIs throughout trial, the PTAB still has the procedural authority to exclude RPI challenges as untimely.

In its cautionary decision, the PTAB reminds parties that the PTAB's rules "shall be construed to secure the just, speedy, and inexpensive resolution of every proceeding." 37 C.F.R. § 42.1(b). The PTAB explained that Patent Owner's RPI challenge—which was not raised until late in the course of the proceedings, and based primarily on information in Patent Owner's possession prior to institution—would frustrate this goal. Patent Owner did not dispute that it was aware of the relevant facts for nearly a year or more, during which time the parties and the Board had expended significant time and resources. In light of these facts, the PTAB also made a point of noting that it has the authority to exclude evidence, make adverse fact findings, and preclude a party from presenting or contesting an issue in the event of "dilatory tactics" or "actions that . . . cause unnecessary delay or an unnecessary increase in the cost of the proceeding." 37 C.F.R. § 42.12.

However, the PTAB did not need to decide whether such sanctions were warranted in this case, finding that the RPI challenge failed on the merits as well. The PTAB restated that the focus of the RPI "inquiry is the link (if any) between the non-party and the specific petition/proceeding at issue." None of Patent Owner's arguments or evidence demonstrated that the alleged RPIs controlled the proceeding, and thus the PTAB denied the motion to vacate.

Petitioner First Quality Baby Products, LLC is represented in these three related *inter partes* review ("IPR") proceedings by Kenneth P. George and Brian A. Comack of Amster, Rothstein & Ebenstein LLP. Jung S. Hahm and Sandra A. Hudak assisted Mr. George and Mr. Comack with the proceedings.

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Messrs. George and Comack have appeared in numerous IPR proceedings on behalf of firm clients.

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