

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.



In the Matter of)
)
Distribution of the 2004, 2005, 2006)
2007, 2008 and 2009)
Cable Royalty Funds)
_____)

Docket No. 2012-6 CRB CD 2004-2009
(Phase II)

Received

MAR 10 2017

Copyright Royalty Board

In the Matter of)
)
Distribution of the 1999-2009)
Satellite Royalty Funds)
_____)

Docket No. 2012-7 CRB SD 1999-2009
(Phase II)

**MOTION TO IMPOSE SANCTIONS AGAINST INDEPENDENT PRODUCERS GROUP
FOR DISREGARDING THE JUDGES' PROCEDURAL RULES**

Pursuant to the Copyright Royalty Judges' ("Judges") January 10, 2017 *Order On IPG Motion For Leave To File Amended Written Direct Statement* ("January 10, 2017 Order"), the Motion Picture Association of America, Inc. ("MPAA") hereby submits this *Motion For Sanctions Against Independent Producers Group For Disregarding The Judges' Procedural Rules* ("Motion").

BACKGROUND

On August 22, 2016, MPAA, the Settling Devotional Claimants ("SDC"), and Independent Producers Group ("IPG") filed their respective Written Direct Statements in this proceeding. On August 31, 2016, IPG filed a pleading entitled "Amended Direct Statement Of Independent Producers Group" (hereafter "IPG ADS"). On September 2, 2016, MPAA moved to strike the IPG ADS because it failed to comply with Section 351.4(c) of the Judges'

regulations governing the filing of Amended Written Direct Statements, and because it was a blatant attempt to circumvent the Judges' regulations by submitting a new methodology out of time, and outside the procedural constraints imposed on the parties in these proceedings by the Judges' regulations and scheduling orders.¹ In its opposition brief, IPG mischaracterized the substantive nature of the changes in the IPG ADS, falsely describing them as "typographical errors" in Dr. Cowan's formulas rather than methodological changes. *See* IPG Opposition to MPAA Motion To Strike at 2. Because IPG refused to admit that it was presenting a new methodology in the IPG ADS, MPAA was compelled to engage its expert witness, Dr. Jeffrey Gray, to review the IPG ADS and submit a declaration explaining the nature of IPG's changes. On October 7, 2016, the Judges granted MPAA's motion to strike and removed the IPG ADS filed on August 31, 2016 from the record in this proceeding.² In that ruling, the Judges observed that a party may only amend a Written Direct Statement by right as set forth in Section 351.4(c) of the Judges' regulations, and reserved ruling on the question of whether (and under what circumstances) a party may file a motion seeking leave to amend its Written Direct Statement. *See* October 7, 2016 Order at 4, n.6 and 7.

Thereafter, on October 20, 2016, IPG filed a new motion seeking leave to file the IPG ADS ("October 20 Motion"). MPAA opposed IPG's October 20 Motion, pointing out once again that the IPG ADS does not *merely* or *mainly* correct errors, but, instead, presents a new methodology to the Judges and the parties, in violation of the Judges' regulations and the Copyright Act. Once again, IPG refused to be candid about the significance of the

¹ SDC also filed a motion seeking to strike the IPG ADS on September 9, 2016, making similar arguments to those raised by MPAA.

² *See* Order Granting MPAA And SDC Motions To Strike IPG Amended Written Direct Statement And Denying SDC Motion For Entry Of Distribution Order at 1-5 (October 7, 2016) ("October 7, 2016 Order").

methodological changes in the IPG ADS.³ Accordingly, MPAA was *again* compelled to engage Dr. Gray at substantial expense, to review the IPG ADS and provide a second declaration explaining the nature of the changes. Unbelievably, IPG conceded that the IPG ADS was necessary because IPG's counsel, Brian D. Boydston, "did not review or consider Dr. Cowan's report prior to its submission." October 20 Motion at 3, n.5, and attached Cowan Declaration at 2, ¶ 4.

Notwithstanding MPAA's opposition, the Judges granted IPG's October 20 Motion and permitted IPG to file the IPG ADS. *See* January 10, 2017 Order at 6. However, the Judges strongly criticized IPG's conduct, and found that MPAA suffered prejudice as a result of IPG's "dilatory practices" in filing the IPG ADS.⁴ The Judges also found that the actions of IPG and its counsel had "occupied the limited resources of the Judges and their staff and delayed the current proceeding and other pending business with which both Judges and staff are fully occupied."⁵ Accordingly, the Judges invited MPAA and SDC to file motions regarding "the Judges' authority, if any, to impose financial or other sanctions in this circumstance in which [IPG] has disregarded (or negligently or purposely misinterpreted) the Judges' procedural rules without explanation or plausible justification."⁶

As explained more fully herein, MPAA submits that the Judges' authority to levy sanctions in royalty distribution proceedings is consistent with relevant statutes and well settled in light of precedent. MPAA, therefore, respectfully requests that the Judges enter sanctions

³ *See* October 20 Motion at 2-7, attached Cowan Declaration at 3-7, ¶¶ 6-14.

⁴ *See* January 10, 2017 Order at 6.

⁵ *See id.* at 4.

⁶ *See id.* at 7.

against IPG and its counsel as proposed below for their purposeful disregard for the Judges' regulations in connection with filing the IPG ADS.

ARGUMENT

IPG is not a neophyte. It has routinely appeared before the Judges since the 1997 Cable Phase II royalty distribution proceeding, and is, by now, very familiar with the Judges' rules and regulations. Notwithstanding such knowledge, IPG has repeatedly disregarded and defied the Judges' rules and regulations throughout this proceeding, causing needless confusion, unwarranted expenditure of the Judges' limited judicial resources, and a significant delay in the resolution of this proceeding.⁷ While the Judges are empowered with the inherent authority to sanction IPG for its misconduct, and have done so on several occasions, it is clear that IPG remains undeterred. The recent misconduct by both IPG and its counsel confirms that imposing a harsher sanction is not only warranted, but is crucial to effectively deter IPG's wanton behavior going forward and to address the substantial prejudice IPG has imposed, and continues to impose, on MPAA and SDC's represented claimants—some of whom have been waiting nearly for *two decades* to receive final distribution of royalties that are at issue here, and who continue to wait for those royalties.⁸

Put simply, enough is enough. IPG's misconduct warrants its dismissal from this proceeding, or at a minimum, striking the IPG ADS from the record as a sanction and prohibiting IPG's reliance on the pleading. Further, the Judges should impose monetary

⁷ Due to IPG's misconduct, the Judges were forced to take the March 2017 hearing date that was scheduled for resolution of this proceeding off calendar and reschedule it for February 5, 2018. *See Order Rescheduling Hearing* at 1 (January 10, 2017).

⁸ As the Judges know, this proceeding concerns the distribution of 1999-2009 satellite and 2004-2009 cable royalties. The oldest of these royalties, which are satellite royalties attributable to 1999, were initially deposited with the Licensing Division of the Copyright Office eighteen years ago. The most recent of the royalty funds at issue in this proceeding are the cable and satellite royalties attributable to 2009, which were deposited eight years ago.

sanctions against IPG's counsel by awarding to MPAA and SDC their attorney's fees, expert witness fees, and costs incurred in connection with responding to the IPG ADS and as a result of prosecuting the instant motion for sanctions.

I. The Judges Have Inherent Authority To Impose Sanctions Against IPG.

The Judges are empowered with the statutory authority to "make any necessary procedural and evidentiary rulings in any proceeding under this chapter." 17 U.S.C. § 801(c). The D.C. Circuit has interpreted this statutory language as encompassing inherent authority to "impose discovery sanctions as a consequence of [the Judges'] statutory grant of authority to oversee discovery," in response to serious discovery violations.⁹ The D.C. Circuit also expressly rejected the notion that the imposition of sanctions violates IPG's due process rights where IPG "received sufficient notice that it might be sanctioned" and "ha[s] the opportunity to defend itself at a Board hearing."¹⁰

Under that authority, the Judges have sanctioned IPG in this very proceeding for discovery and procedural misconduct. To wit, the Judges dismissed several of IPG's claimants as "a sanction for IPG's failure to produce a document that was responsive to SDC's discovery requests."¹¹ The Judges also revoked IPG's presumption of claims' validity as a sanction for

⁹ *Indep. Producers Gp. v. Librarian of Congress*, 792 F.3d 132, 138 n.4 (D.C. Cir. 2015) (citing 17 U.S.C. §§ 801(c), 803(b)(6)(C)); see also *Order Denying MGC Motion to Dismiss BCG Claims in the Program Supplier Category*, Docket No. 14-CRB-0011-SD (2010-13) (September 15, 2016) ("[T]he Judges' procedural rules concerning discovery are silent as to the imposition of sanctions for discovery violations. Nevertheless, the Judges have issued such sanctions in the past under their statutory authority to oversee discovery, and the DC Circuit has confirmed their authority to do so.") (citing *Indep. Producers Gp. v. Librarian of Congress*, 792 F.3d 132, 138 n.4 (D.C. Cir. 2015); see also *Atlantic Richfield Co. v. Department of Energy*, 769 F.2d 771, 795 (D.C. Cir. 1985) ("It seems to us incongruous to grant an agency authority to adjudicate -- which involves vitally the power to find the material facts -- and yet deny authority to assure the soundness of the fact-finding process. Without an adequate evidentiary sanction, a party served with a discovery order in the course of an administrative adjudicatory proceeding has no incentive to comply, and oftentimes has every incentive to refuse to comply.")).

¹⁰ *Indep. Producers Gp.*, 792 F.3d at 139 n.5.

¹¹ *Order Denying IPG Third Motion for Modification Of March 13, 2015 Order*, Docket Nos. 2012-6 CRB CD 2004-2009; 2012-7 CRB SD 1999-2009 (Phase II) (June 1, 2016). See also *Memorandum Opinion And Ruling On*

proffering false testimony in this proceeding and filing a fraudulent claim,¹² and publicly “admonished” IPG as a sanction for failing to follow the Judges’ procedural regulations regarding service of process.¹³

Further, the Register of Copyrights (“Register”) has previously recognized the Judges’ unambiguous authority to dismiss a party from a royalty distribution proceeding for procedural violations.¹⁴ Specifically, on June 26, 2006, following a series of repeated regulatory transgressions by IPG, the Register ruled as follows:

While the Office will excuse a party’s occasional lapse in following the regulations, even those governing proper service, the Office cannot and will not tolerate a party’s persistent failure to comply as is the case here. IPG’s repeated failure to effect proper service even after the Office had cited the appropriate rules demonstrates a flagrant disregard of the rules governing these proceedings and of Orders issued therein, as well as a lack of respect for the Office and the other parties in these proceedings. Administrative proceedings cannot be run effectively or efficiently where parties to the proceeding disregard the carefully developed procedures governing the process, and a party will be, and indeed has been, dismissed from a proceeding for failure to adhere to its rules and comply with its orders. . . . Accordingly, any future failure by IPG to comply with the Office’s regulations, especially those governing the proper service of pleadings, will result in IPG’s dismissal from these proceedings.¹⁵

Consistent with their dismissal authority, the Judges and their predecessor tribunals have routinely dismissed parties for a failure to comply with the regulations governing royalty

Validity And Categorization Of Claims, Docket Nos. 2012-6 CRB CD 2004-09 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II), at 39 (March 13, 2015) (“March 13, 2015 Order”).

¹² See March 13, 2015 Order at 9-10 (declining to “afford to IPG the ‘presumption of validity’ [that] ... each filed claim ... is compliant with the authority, veracity and good faith standards now codified in 37 C.F.R. § 360.3(b)(vi)”).

¹³ See *Order Admonishing IPG*, Docket Nos. 2012-6 CRB CD 2004-09 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II), at 1-2 (January 3, 2017) (“January 3, 2017 Order”).

¹⁴ See *id.*

¹⁵ *Order*, Docket Nos. 2001-8 CARP CD 98-99, et al., at 6 (June 26, 2006) (internal citations omitted) (“June 26, 2006 Order”).

distribution proceedings. *See, e.g., Order Dismissing Petition to Participate*, Docket Nos. 2012-6 CRB CD 2004-2009 (April 18, 2014) and 2012-7 CRB SD 1999-2009 (Phase II) (April 18, 2014) (dismissing David Powell's cable and satellite Petitions to Participate for failing to establish that Mr. Powell "has the requisite 'significant interest'" in the proceedings and prohibiting Mr. Powell from filing further papers with the Board); *Order*, in Docket No. 2002-1 CARP DTRA3 (August 15, 2003) (dismissing party in rate adjustment proceeding for failure to comply with Office Order and with service requirements); *Order*, in Docket No. 95-1 CARP DD 92-94 (May 9, 1996) (dismissing two participants in a distribution proceeding for failure to comply with procedural and substantive rules for the submission of written direct cases, including failure to effect proper service on the parties in the proceeding). Thus, it is clear that the Judges have authority to impose a wide range of sanctions against IPG. For the reasons stated below, they should impose sanctions on IPG here.

II. IPG Has Consistently Failed To Comply With The Judges' Rules And Regulations In This Proceeding And Its Conduct Here Warrants Dismissal From This Proceeding.

IPG's history in royalty distribution proceedings, prior to the Copyright Royalty Board era, is replete with procedural and other violations. *See, e.g.,* June 26, 2006 Order at 4-6. Unfortunately, IPG has remained unrepentant. Its illegal substantive amendment of its written direct statement one day before the parties were to propound initial discovery requests, in direct contravention of 37 C.F.R. § 351.4(c) of the Judges' regulations, is just the latest example of its broader and disturbing, two year pattern of extraordinary misconduct *in this proceeding*.

First, the Judges revoked IPG's presumption of claims validity due to (1) Raul Galaz's false testimony during the December 2014 preliminary hearing in this proceeding concerning the

source of missing pages in IPG's 2008 satellite claim; and (2) IPG's failure to remove the fraudulent Tracee Productions claims from IPG's 1999 satellite claim in this proceeding.¹⁶

Second, despite the Judges' clear ruling requiring IPG to incorporate their Preliminary Hearing Order into its Written Rebuttal Statement,¹⁷ IPG failed to do so as to conflicting program claims, resulting in massive confusion and multiple rounds of "replacement" IPG exhibits throughout the April 2015 distribution hearing in this proceeding,¹⁸ prejudicing both MPAA and SDC.

Third, IPG blatantly disregarded the Judges' regulations in this proceeding when it failed to serve MPAA and SDC with a copy of a motion IPG filed with the Judges on September 15, 2016.¹⁹ After MPAA and SDC informed the Judges that they never received a service copy of IPG's motion, which resulted in IPG's motion being unopposed, the Judges admonished IPG for failing to serve a copy of its motion to all parties to this proceeding as required by the Judges' procedural regulations.²⁰

IPG's recurring misconduct threatens to erode the integrity of this proceeding, as it substantially impairs the Judges' ability to equitably and efficiently administer it. Moreover,

¹⁶ See March 13, 2015 Order at 7.

¹⁷ *Id.* at 45.

¹⁸ First, IPG offered more than sixty pages of purported "replacement" IPG Exhibits 253-283 on April 15, 2015, having just provided copies of those documents to counsel for MPAA and SDC at 6:42AM and 7:03AM that same morning. See April 15, 2015 Tr. Vol. 3, at 23 (Olaniran). Next, on April 16, IPG offered yet another round of purported corrections, IPG Exhibits 253-283 Prime, to replace the April 15 provisionally admitted exhibits - having provided copies of the IPG Exhibits 253-283 Prime to counsel for MPAA and SDC for the first time at 11:44PM on April 15, 2015. See April 16, 2015 Tr. Vol. 4, at 66-83 (Boydston). Despite the mass confusion that ensued, and the prejudice suffered by MPAA and SDC, the Judges ultimately allowed IPG's replacement exhibits into evidence. See *Order Denying SDC Motions To Strike IPG Testimony And Exhibits* at 2-3 and 5-6 (July 20, 2015); *Order Denying In Part And Granting In Part MPAA Motions Relating To IPG Testimony And Exhibits* at 4-5 (July 20, 2015).

¹⁹ See January 3, 2017 Order at 2.

²⁰ *Id.* at 2.

IPG's actions have caused (and continue to cause) a significant delay in the ultimate resolution of this proceeding, to the ongoing detriment of the copyright owners entitled to receive the royalties subject to distribution.²¹ Further, such behavior forces MPAA to incur unnecessary substantial costs. IPG's incomprehensible eleventh-hour filing required MPAA to expend significant resources to quickly review, attempt to identify the changes made in the IPG ADS, and formulate appropriate discovery requests on the eve of the deadline for serving such requests. MPAA incurred additional legal fees and costs in connection with multiple rounds of motion practice to address the improper filing, including expert witness fees associated with having Dr. Gray review and analyze the changes made in the IPG ADS, and submit a declaration to the Judges explaining the nature of IPG's changes.

IPG's history and ongoing pattern of misconduct in this proceeding plainly warrants its dismissal from this proceeding as a sanction. It is abundantly clear that the contumacious nature of IPG's conduct can be deterred only with the harsh sanction of dismissal, as IPG has been so far undaunted in its chronic disregard for the regulations governing this proceeding. In fact, the need for such a sanction is amplified here not only to abate IPG's misbehavior in this proceeding but also to discourage such conduct in pending and future proceedings. As the above precedent shows, the Judges have the authority to dismiss a party for ongoing misconduct. Despite having clear notice of the importance of following the Judges' regulations and having been warned that failure to follow such rules can result in dismissal from a proceeding, IPG has continued its brazen lack of regard for those rules. Accordingly, the Judges should exercise their authority and

²¹ See note 7, *supra*.

dismiss IPG from this proceeding as a party for its persistent failure to comply with the Judges' regulations.²²

III. In The Alternative, IPG's Misconduct Warrants Striking The IPG ADS From The Record.

While dismissal of IPG from this proceeding is more than justified, in the event that the Judges do not dismiss IPG from this proceeding, IPG's latest antics warrant, at a minimum, striking the IPG ADS from the record and prohibiting IPG from introducing any evidence based, or otherwise relying, on the IPG ADS. MPAA acknowledges that in the Judges' January 10, 2017 Order, the Judges allowed IPG to file the IPG ADS in the interest of "equity and efficiency," notwithstanding the fact that they initially struck the filing.²³ To be clear, MPAA is not seeking reconsideration of the January 10, 2017 Order. Rather, MPAA requests that the IPG ADS be stricken from the record as a *sanction* for IPG's misconduct, a position that the Judges have not previously considered or addressed.²⁴

As stated, the Judges have exercised their inherent authority under Section 801(c) to strike and/or exclude evidence as an evidentiary sanction for violations of its regulations,²⁵ and should do so here. For example, the Judges disallowed claims asserted for Creflo Dollar

²² Since IPG is an agent, if the Judges grant MPAA's motion and dismiss IPG as a party in this proceeding for its ongoing misconduct and the misconduct of IPG's counsel, the copyright owners IPG claims to represent would have other remedies to seek recompense, including state court actions for breach of contract. *See, e.g., Memorandum Opinion And Order Following Preliminary Hearing On Validity Of Claims*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) at 8 (March 21, 2013); *see also Order Denying IPG Motion For Clarification And Reconsideration Of Preliminary Hearing Order Relating To Claims Challenged By MPAA*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) at 2-3 and n.2 (May 23, 2013) (holding that the Judges and their predecessors "set a rule for the distribution of cable royalties, 'leav[ing] the parties free to litigate their contractual disputes in an appropriate forum.'" (citing *National Broadcasting Co. v. Copyright Royalty Tribunal*, 848 F.2d 1289, 1296 (D.C. Cir. 1988))).

²³ January 17, 2017 Order at 3-5; *see also* October 7, 2016 Order at 4, n.5 (citing 37 C.F.R. § 350.4(e)) (emphasis in original).

²⁴ *See id.*

²⁵ *See* cases cited *infra* note 9.

Ministries, Benny Hinn Ministries, and Eagle Mountain International Church dba Kenneth Copeland Ministries “[b]ased on IPG’s failure to produce evidence in discovery in this proceeding relating to claimants’ attempted termination(s) of IPG’s agency.”²⁶ Further, in the 2000-2003 Cable Phase II proceeding, the Judges sanctioned IPG for failing to produce to the Joint Sports Claimants all documents relevant to its relationship with Fédération Internationale de Football Association (“FIFA”) by excluding several of its exhibits.²⁷ In affirming the imposed sanction, the D.C. Circuit concluded that excluding IPG’s evidence as “an evidentiary sanction [is] an entirely appropriate response” to IPG’s blatant discovery violations.²⁸ Here, striking the IPG ADS as a sanction for IPG’s obstructionist behavior is clearly supported by precedent and warranted as a lesser sanction should the Judges not dismiss IPG from this proceeding.

IV. The Judges Should Sanction IPG’s Counsel For Improperly Filing The IPG ADS And Award Attorneys’ Fees And Costs To MPAA And SDC.

In addition to the relief sought above, the Judges should sanction IPG’s counsel, Brian D. Boydston for his role in IPG’s transgressions in this proceeding. Mr. Boydston has represented IPG in all of the past instances recited herein where IPG has been admonished or punished for misconduct. As an officer of the court, he had the ultimate responsibility for his client’s pleadings, but clearly he has failed to live up to that responsibility. His conduct is particularly egregious in the present instance because of his inexcusable failure to even “review or consider

²⁶ March 13, 2015 Order at 39.

²⁷ See *Order On IPG Motions For Reconsideration Of Evidentiary Rulings*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) (January 11, 2013).

²⁸ *Indep. Producers Gp.*, 792 F.3d at 138.

Dr. Cowan's report prior to its submission"²⁹ as part of IPG's original written direct statement on August 22, 2016. Mr. Bodyston's improper conduct is in direct violation of the Judges' regulations requiring attorneys to certify that the documents they sign contain contentions that are accurate and warranted. Pursuant to 37 C.F.R. § 350.4(e)(1):

The signature of an attorney constitutes certification that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (i) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (ii) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (iv) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Consistent with this regulation, the Judges have explained that they "fully expect counsel for all parties to review all documents to be filed with the Judges for accuracy, and to correct errors *before* filing those documents."³⁰

While the penalty for failing to comply with 37 C.F.R. § 350.4(e)(1) is not set forth in the regulations, the Judges can look to the Federal Rules of Civil Procedure as instructive authority. Fed. R. Civ. P. 11(b) employs language nearly identical to 37 C.F.R. § 350.4(e)(1) to govern counsel's representations to a court, and "obviously require[s] that a pleading, written motion, or

²⁹ *IPG's Opposition To The MPAA's Motion to Strike Independent Producer Group's Amended Direct Statement*, 2012-6 CRB CD 2004-09 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II) at 3, n.4 (Sept. 12, 2016); October 20 Motion at 3, n.5, and attached Cowan Declaration at 2 ¶ 4.

³⁰ October 7, 2016 Order at 4, n.5 (citing 37 C.F.R. § 350.4(e)) (emphasis in original).

other paper be read before it is filed or submitted to the court.”³¹ Unlike the Judges’ regulations, however, Fed. R. Civ. P. 11 articulates the consequences for a failure to comply with the rule by expressly permitting a court to impose sanctions against counsel, which may include an award of reasonable attorney’s fees and other expenses. In pertinent part, Fed. R. Civ. P. 11(c) provides:

(c) SANCTIONS.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

...

(4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, *an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.*

(emphasis added). Consistent with Fed. R. Civ. P. 11, federal courts have entered sanctions against counsel for failing to read filings prior to submitting them to a court. *See, e.g., Kenna v. United States Dep't of Justice*, 128 F.R.D. 172, 177 (D.N.H. 1989) (imposing sanctions under Rule 11 with an award of attorney’s fees when counsel conceded “that he did not carefully read the documents [he filed] because [his client], the draftsman, was an experienced trial attorney.”); *Berg v. Ricks*, No. 95-16167, 1996 U.S. App. LEXIS 26853, at *2 (9th Cir. 1996) (noting that “the district court also imposed \$2,000 in Rule 11 sanctions against [client’s] attorney. . .for misconduct[,] including failing to read the papers he filed with the court.”).

³¹ Notes of Advisory Committee on Rules – 1993 Amendment for Fed. R. Civ. P. 11; *see also* Fed. R. Civ. P. 11(b)

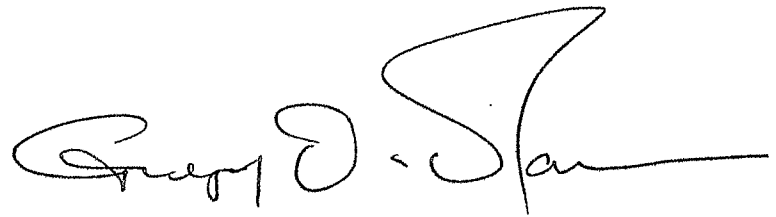
Thus, Fed. R. Civ. P. 11(c) provides clear guidance for an award of attorney's fees and costs associated with responding to the IPG ADS and as a result of prosecuting the instant motion for sanctions.³² Mr. Boydston's admitted refusal to read papers he filed with the Board violates 37 C.F.R. 350.4(e)(1), substantially disrupted this proceeding and severely prejudiced MPAA and SDC who were both forced to incur legal fees, expert witness fees, and costs in order to respond to an easily avoidable filing.

CONCLUSION

For all of the foregoing reasons, the Judges should grant MPAA's motion, and sanction IPG and its counsel as described herein for their failure to comply with the Judges' regulations in connection with filing the IPG ADS. MPAA also seeks any other relief the Judges deem appropriate.

³² Should the Judges grant the instant motion, MPAA is willing to provide the Judges with a full accounting of their attorney's fees, expert witness fees, and costs associated with responding to the IPG ADS, and/or such other proof as the Judges may require.

Respectfully submitted,



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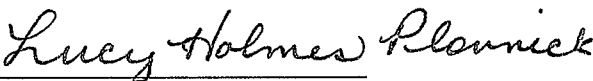
Dated: March 10, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2017, a copy of the foregoing pleading was sent by Federal Express overnight mail to the parties listed below.

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