

From: Siddiqui, Saqib <SSiddiqui@mayerbrown.com>  
Sent: Thursday, December 29, 2016 5:48:37 PM  
To: Trials  
Cc: Rosenthal, Brian A.; Patrick Zuili  
Subject: CBM2016-00021 & CBM2016-00022 - request for authorization to file motion

Honorable Patent Trial and Appeal Board:

Petitioner in cases CBM2016-0021 and -0022 hereby requests authorization to file a motion under 37 C.F.R. § 42.5(c)(2) for an extension of Due Date 4 or in the alternative under 37 C.F.R. § 42.5(c)(3) to excuse Petitioner's filing of its Request for Oral Argument that was due on December 22, 2016 but was filed 11 hours late on the morning of December 23, 2016 (Paper No. 34).

Petitioner intends to demonstrate that good cause exists for the relief sought. While Petitioner acknowledges it missed the deadline, the reason for the missed deadline was that lead counsel for Petitioner (Saqib Siddiqui) was called home unexpectedly on the afternoon of December 22 to care for his two-year-old son in view of a medical emergency with his mother-in-law, and in the ensuing commotion neglected to file the already-prepared request until the following morning. Petitioner is prepared to elaborate on the details of these events (including supporting medical documentation) in the requested motion.

Petitioner also notes that it previously emailed the Board on December 23, 2016 informally requesting that the Board accept the late filing. This course of action was recommended by PTAB supervisory paralegal Andrew Kellogg. On the morning of December 23, Mr. Kellogg called Mr. Siddiqui regarding another matter related to these petitions. Mr. Siddiqui advised Mr. Kellogg of the late filings and asked whether a motion should be filed to rectify the situation. Mr. Kellogg advised that the late filing was very likely not going to be an issue, that no such motion should be necessary and that instead an informal email should resolve the issue. The Board denied the request on December 27 (Paper No. 35). Thus, Petitioner now seeks authorization to file a formal motion, given the gravity of the situation and the prejudice that would result to Petitioner if it does not obtain the requested relief.

Petitioner also intends to demonstrate in the requested motion that no prejudice will result by granting Petitioner relief from the missed deadline. Patent Owner cannot claim prejudice from receiving the Request for Oral Argument 11 hours after it was due. This is especially true where Patent Owner already contemplated that a hearing would take place in these petitions because he requested Judges

Easthom, Daniels and White consolidate the hearings with that of CBM2016-0008 during a call on November 16, 2016.

Petitioner also notes that Patent Owner has repeatedly been excused from compliance with various PTAB rules in these proceedings, including when Patent Owner missed the deadline to file objections to evidence. While of course Petitioner recognizes that Patent Owner is acting pro se and does not expect the same accommodations, it would seem unfair and contrary to the goal of adjudicating this petition on the merits to deny Petitioner the relief it seeks given the nature and circumstances of Petitioner's non-compliance here.

As such, Petitioner requests authorization to file a motion so that it can fully set forth the basis for an extension or in the alternative for relief from missing Due Date 4.

Petitioner is available at any time in December or the first week of January for a call to discuss the subject of this email.

Best regards,

Saqib Siddiqui

Saqib J. Siddiqui

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