

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FORD MOTOR COMPANY,
Petitioner,

v.

VERSATA DEVELOPMENT GROUP, INC.,
Patent Owner.

CBM2016-00100
Patent 8,805,825 B1

Before SALLY C. MEDLEY and JAMES B. ARPIN, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On May 1, 2017, a conference call was held involving counsel for the parties and Judges Medley and Arpin. Patent Owner requested the conference call to discuss the late filing of Petitioner's Rehearing Request (Paper 13). Patent Owner requests that the Board expunge the Rehearing Request as untimely. Alternatively, Patent Owner seeks authorization to file an opposition to the Rehearing Request. Petitioner opposes expungement, but does not oppose the filing of a Patent Owner opposition, limited to addressing Petitioner's arguments made with respect to the Federal Circuit's recent decision in *Rembrandt Wireless Technologies, LP v. Samsung Electronics Co.*, Case No. 2016-1729 (Fed. Cir. Apr. 17, 2017).

Late Filing of Petitioner's Rehearing Request

According to Petitioner, Petitioner served through email its Rehearing Request on the day it was due, April 19, 2017, and also attempted to upload the request the same day in PTAB E2E. Although Petitioner did not independently verify that the paper had been uploaded successfully into the PTAB E2E system, Petitioner received an email receipt suggesting that the paper had been filed. On April 20, 2017, Board personnel notified Petitioner that, although it appeared that an attempt was made to file a rehearing request, no rehearing request was uploaded into the PTAB E2E system. Board personnel instructed Petitioner to refile its Rehearing Request, and, on that same day, Petitioner successfully uploaded the Rehearing Request.

Counsel for Patent Owner argued that Petitioner failed to follow the proper procedure and that the Board's rules matter, including timely filing of papers. A late action will be excused on a showing of good cause or upon a Board decision that consideration on the merits would be in the interests of justice. 37 C.F.R. § 42.5(c)(3). As we discussed during the call, based on

the record before us and the presentations made, the one day late filing is excused. In particular, Board personnel already acknowledged the excusable nature of this delay when it notified Petitioner that no paper had been uploaded and instructed Petitioner to refile. In any event, we disagree with Patent Owner that it is prejudiced by the one day late filing because Patent Owner was served the Rehearing Request on the day it was due. While parties should independently verify that papers are uploaded successfully to PTAB E2E – especially when filings are made on the deadline date, here it was not unreasonable for Petitioner to believe the paper had been uploaded successfully due to the email notification it received suggesting that the paper had been uploaded. Accordingly, we excuse the one day late filing and deny Patent Owner’s request to expunge the paper.

Further Briefing in the Proceeding

As noted above, Patent Owner alternatively seeks authorization to file an opposition to Petitioner’s Rehearing Request. Petitioner does not oppose the filing of such an opposition, as long as the arguments are limited to addressing the recent *Rembrandt Wireless* Federal Circuit decision. Upon consideration of the record before us, we grant Patent Owner’s request to file an opposition limited to addressing arguments made with respect to *Rembrandt Wireless*. Petitioner is authorized to file a reply, limited to the arguments made in the opposition.

Order

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner’s request for us to expunge Petitioner’s Rehearing Request is *denied*;

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FURTHER ORDERED that Patent Owner's request to file an opposition to the Rehearing Request is *granted* for the limited purpose of addressing arguments made with respect to *Rembrandt Wireless*;

FURTHER ORDERED that Patent Owner's opposition is limited to four pages and is due no later than May 9, 2017; and

FURTHER ORDERED that Petitioner is authorized to file a reply, limited to two pages due no later than May 16, 2017, limited to addressing arguments made in the opposition.

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