

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ORACLE CORPORATION,
NETAPP INC. and
HUAWEI TECHNOLOGIES CO., LTD
Petitioners

v.

CROSSROADS SYSTEMS, INC.
Patent Owner

Case IPR2014-01209
Patent 7,051,147

**PATENT OWNER'S UNOPPOSED MOTION TO DEEM FILING OF
PATENT OWNER'S RESPONSE AS TIMELY
37 C.F.R. § 42.5(c)(3)**

Patent Owner Crossroads Systems, Inc. requests the Board deem the filing of its Patent Owner's Response and all accompanying exhibits timely pursuant to its authority under 37 C.F.R. § 42.5(c)(3). That section provides that "[a] late action will be excused either on a showing of good cause or upon a Board decision that consideration on the merits would be in the interests of justice." This rule must be construed to secure the just, speedy, and inexpensive resolution of every proceeding. 37 C.F.R. § 42.1(b).

Good Cause For good cause, Patent Owner shows as follows:

Patent Owner's Response in this proceeding, and in four related proceedings (IPR2014-01197, -01207, -01463, and -01544) were due on May 26, 2015. On the afternoon of May 26, Ms. Amber Collins, a paralegal with the Wong Cabello firm that has extensive experience with the PRPS system, successfully filed the Response and all accompanying exhibits in related proceeding IPR2014-01197. Ex. A ¶¶ 1, 3. The response and its exhibits took approximately forty minutes to upload into the PRPS filing system, and filing was completed at 6:25 PM Central on May 26. *Id.* ¶ 3. Based on this and past experiences in making similar filings in PRPS, counsel allocated approximately 45 minutes of time to file each response and all exhibits in the -1207 and -1209 proceedings. *Id.* ¶ 10.

At approximately 10:30 P.M. Eastern, Ms. Collins began filing the Response and accompanying exhibits in the -1209 proceeding. *Id.* ¶ 4. Around 11:15 Eastern,

she informed counsel that the PRPS system was behaving unusually slowly, and had effectively ceased accepting upload of the remaining exhibits. *Id.* At that time, approximately 15 exhibits had been uploaded. *Id.* At 11:30 Eastern, counsel determined that the filings could not be completed on time in the -1207 and -1209 proceedings given the technical difficulties. *Id.* ¶ 5. The on-going filing of the -1209 Response and exhibits, which had not progressed further, was aborted. *Id.* Ms. Collins then filed the Patent Owner's responses in both proceedings, without exhibits, completing both by 11:37 PM Eastern. *Id.* She then continued to attempt to file exhibits in the -1207 proceeding. *Id.* Counsel served all documents, including the unfiled exhibits, on Petitioner via e-mail (pursuant to agreement) at 11:52 Eastern, and notified the Board of this issue at 12:05 A.M on Tuesday May 27. Ex. B.

By 12:16 A.M. Eastern (39 minutes since beginning at 11:37), Ms. Collins had successfully uploaded 15 exhibits to PRPS. Ex. A ¶ 6. At that time, the system once again slowed and refused to accept additional exhibits. *Id.* The exhibits successfully uploaded to that point were then filed. *Id.* Additional efforts were then made to upload additional exhibits. *Id.* When it became clear that those efforts would be unsuccessful, counsel determined that no more could be accomplished and that additional attempts would be made the next day. *Id.*

On the morning of Tuesday, May 27, Ms. Collins again attempted to file the unfiled exhibits in the -1207 proceeding, and experienced the same issues. *Id.* ¶ 7. The PRPS system would not complete acceptance of an uploaded exhibit. *Id.* Ms. Collins then contacted the PRPS help desk, but was not able to immediately speak with anyone. *Id.* In the afternoon, counsel and Ms. Collins spoke with Maria at the PTAB, who suggested a modification to the computer settings. *Id.* This was done and slightly improved the speed with which exhibits were uploaded. *Id.* Ms. Collins again began the process of uploading exhibits for the -1207 proceeding at approximately 4:00 PM Eastern. *Id.* However, the system speed was still much lower than had been experienced on prior occasions. *Id.* Finally, at 6:22 PM Eastern, the remaining exhibits were successfully filed. *Id.*

At around 5:30 PM Eastern, Patent Owner's counsel also began attempting to upload the exhibits in the -1209 proceeding from a different location. *Id.* ¶ 8. All exhibits for the -1209 proceeding were uploaded by 7:55 P.M. Eastern. *Id.*

Based on Ms. Collins' experience (Ex. A ¶ 10), as well as that of undersigned counsel, the filings of Patent Owner's responses and all accompanying exhibits in the -1207 and -1209 proceedings was expected to take at most forty-five minutes each. The filings were begun with sufficient time to accomplish this before the filing deadline. Had the PRPS system been as responsive as it has been in the past, Patent Owner's filings would have been completely timely. Accordingly, there is good

cause for the Board to deem the filings timely and excuse the late filings pursuant to 37 C.F.R. § 42.5(b)(3).

Consideration on the Merits is in the Interests of Justice

Even if there were not good cause to deem Patent Owner's filing timely, consideration of Patent Owner's response on the merits is in the interests of justice. First, the timeliness of the Response must be considered in the context that Due Date 1 is not a statutory deadline but rather an intermediate deadline that may be changed by agreement of the parties. Furthermore, Patent Owner has not filed a motion to amend and has thus eliminated the need for Due Date 3. Second, Petitioners' counsel was timely served via e-mail, pursuant to prior agreement, and given immediate access to complete filings in the -1207 and -1209 proceedings. Ex. B. Thus, Petitioners suffered no prejudice as they had all documents on their due date. Weighing this lack of prejudice to Petitioners against the prejudice to Patent Owner of not considering the entirety of its Response (which could result in cancellation of some or all of the claims of the '147 Patent), it would be in the interests of justice to excuse the late filing, especially given that the tardiness was the result of unanticipated and unusual technical difficulties with PRPS.

The Board has Previously Granted Similar Motions

The Board has granted requests from parties facing similar circumstances in the past. For example, in *Standard Innovation Corp. v. Lelo, Inc.*, IPR2014-00148,

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