

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 B2

Before HYUN J. JUNG, NEIL T. POWELL, KRISTINA M. KALAN, and
J. JOHN LEE, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

DECISION

Patent Owner's Unopposed Motion to Deem Response Timely Filed
37 C.F.R. § 42.5(c)(3)

IPR2014-01209
Patent 7,051,147 B2

On June 1, 2015, after obtaining permission from the Board, Patent Owner filed a motion (Paper 30, “Mot.”) to deem its Response (Paper 29) and all accompanying exhibits (Ex. 2029–2324) timely filed. Patent Owner represented to the Board on May 27, 2015, that Petitioner does not oppose the motion. For the reasons stated below, Patent Owner’s motion is *granted*.

The deadline for Patent Owner to file the Response was midnight on May 26, 2015. *See* Paper 22. The Patent Review Processing System (“PRPS”) indicates that the Response was filed on May 26, 2015, but that Exhibits 2029–2324 were filed on May 27, 2015.

In support of its motion, Patent Owner provides the Declaration of Amber Collins, the person who handled the filing of the Response and related Exhibits. Mot., Ex. A. Ms. Collins explains that she encountered multiple difficulties with the upload speed of the PRPS system on the evening of May 26, 2015, and on Tuesday, May 27, 2015. *Id.* ¶¶ 3–9; *see also* Mot. 1–4 (discussing the technical difficulties Ms. Collins encountered). Patent Owner notes that it completed filing of the Response itself on May 26, 2015, and “served all documents, including the unfiled exhibits, on Petitioner via e-mail (pursuant to agreement) at 11:52 Eastern.” Mot. 2, citing Ex. B.

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. 37 C.F.R. § 42.5(c)(3). This rule must be construed to secure the just, speedy, and inexpensive resolution of every proceeding. 37 C.F.R. § 42.1(b). Weighing the prejudice to Petitioner of the delay in filing Patent Owner’s Exhibits against the prejudice to Patent Owner of not considering the Response, we determine that it would be in the interests of justice to excuse Patent Owner’s late action.

IPR2014-01209

Patent 7,051,147 B2

We note that Patent Owner began the process of uploading its Response and fifty-nine (59) exhibits in this proceeding at approximately 9:30 pm Central time, which is 10:30 pm Eastern time, approximately one and one-half hours prior to the deadline. Mot., Ex. A, ¶ 4. Although we are mindful that filings will at times be made close to the deadline, the amount of time allotted here was less than ideal because it did not permit for any difficulties. Patent Owner is reminded of the duty to make a good faith effort to meet deadlines. *See* 37 C.F.R. §§ 42.5(c)(3), 42.11, 42.12.

Based on the foregoing, it is hereby

ORDERED that Patent Owner's motion to deem the Response and all accompanying Exhibits timely filed is *granted*.

IPR2014-01209
Patent 7,051,147 B2

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