

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRW AUTOMOTIVE U.S. LLC,
Petitioner,

v.

MAGNA ELECTRONICS INC.,
Patent Owner.

Cases IPR2015-00436, IPR2015-00437,
IPR2015-00438, and IPR2015-00439
Patent 8,599,001 B2¹

Before JUSTIN T. ARBES, BART A. GERSTENBLITH, and
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

ARBES, *Administrative Patent Judge*.

DECISION
Petitioner's Motion to Correct Filing Date
37 C.F.R. §§ 42.5, 42.6

¹ This Decision addresses an issue pertaining to all four cases. Therefore, we exercise our discretion to issue one Decision to be filed in each case. The parties are not authorized to use this style heading for any subsequent papers.

Petitioner filed, in each of the instant proceedings, a motion to correct the filing date accorded to its petition. *See* IPR2015-00436, Paper 2 (“Mot.”); IPR2015-00437, Paper 2; IPR2015-00438, Paper 2; IPR2015-00439, Paper 3. Patent Owner did not file an opposition to any of the motions. *See* 37 C.F.R. § 42.25(a)(1). As the papers and facts of the proceedings are similar, we cite to the papers filed in Case IPR2015-00436.

The petitions in the instant proceedings were accorded a filing date of December 19, 2014—the date when the petitions and accompanying documents were submitted in the Patent Review Processing System (“PRPS”). Paper 7, 1. Petitioner filed, with each petition, a “motion” and “supplement to motion” stating that it began the process of filing in PRPS on December 16, 2014, but could not complete the process because of a PRPS outage. *See* Mot. 1; Paper 4, 1. Petitioner states that the petitions and accompanying documents were mailed to the Office on December 16, 2014, in accordance with 37 C.F.R. § 42.6(b)(2)(i), the filing procedures listed on the Board’s website, and instructions received from Board administrative personnel during the time that PRPS was unavailable. *See* Mot. 1; Paper 3, 62 (certificate of mailing); Paper 4, 1. The petitions include an authorization to charge the deposit account of Petitioner’s counsel for the filing fees, and a certificate of service indicating that they were mailed to Patent Owner on December 16, 2014. Paper 3, 4–5, 60–61, 63. Petitioner requests that the petitions be accorded a filing date of December 16, 2014. Paper 4, 1.

The Board’s rules provide that “[u]nless otherwise authorized, submissions are to be made to the Board electronically via the Internet according to the parameters established by the Board and published on the Web site of the Office.” 37 C.F.R. § 42.6(b)(1). Filing by other means,

such as by mail, requires a “motion requesting acceptance of the submission” and identification of the “date of transmission where a party seeks a filing date other than the date of receipt at the Board.” 37 C.F.R. § 42.6(b)(2).

We have confirmed that PRPS experienced an emergency outage on December 16–18, 2014, and was unavailable for parties to submit petitions or other documents electronically. For administrative efficiency, the Board adopted the following special procedure to be followed during this emergency outage, and published it on the Board’s Web site (at <http://www.uspto.gov/ip/boards/bpai/prps.jsp>):

PRPS is currently down as of December 16, 2014 3:00 pm EST.

PTAB will be extending deadlines for the parties for all matters that do not have statutory deadlines until the site becomes available. As for petition filings, patent owner responses, motions, and requests for rehearing (on institution decisions or final decisions) and any other matters that have an imposed deadline or statutory due date, the parties should send an e-mail to TRIALS@USPTO.GOV indicating the need to file one of these items. DO NOT send attachments. PTAB will authorize filing of late attachments and PTAB will change the filing dates in PRPS to reflect the appropriate filing date. ALL MATTERS SHOULD BE SERVED ON OPPOSING COUNSEL ON THE APPROPRIATE DUE DATE.

The Board also indicated to parties who contacted the Board during the emergency outage that the Board would consider a petition or document that is submitted in accordance with the aforementioned special procedure to be filed timely. Subsequently, the Board published on the Board’s Web site a second notice regarding the PRPS emergency outage, which, in part, provided the following:

Accordingly, for a matter with an imposed deadline or statutory due date, the Board deems filed, in accordance with 37 C.F.R. § 42.6(b)(1), any paper enumerated in the notice above that was submitted in accordance with the instructions set forth above, as of the date an e-mail was sent to Trials@uspto.gov indicating the need to file the paper, as long as the paper was served on opposing counsel on the appropriate due date, and the paper, accompanied by the appropriate fee, was subsequently submitted in PRPS when it became available.

On December 16, 2014, Petitioner began the filing process in PRPS, and then sent emails to the Board for each of the instant proceedings when PRPS became unavailable. Petitioner served the petitions and accompanying documents on Patent Owner, and also mailed copies to the Board. *See* Paper 3, 62–63. Once PRPS became available again, Petitioner exercised reasonable diligence in submitting its petitions, with the respective “motion” and “supplement to motion” for each proceeding, on December 19, 2014, in accordance with the Board’s special procedure.

Based on our review of the record, Petitioner complied with all of the filing requirements of 35 U.S.C. § 312(a) and followed the proper procedures for filing its petitions in view of the temporary unavailability of PRPS. Accordingly, we conclude that it would be appropriate under the circumstances to correct the filing date accorded to the petitions.

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner’s motion to correct the filing date accorded to its petition in each of the instant proceedings is *granted*; and

FURTHER ORDERED that the petitions in the instant proceedings are accorded a filing date of December 16, 2014.

IPR2015-00436, IPR2015-00437, IPR2015-00438, IPR2015-00439
Patent 8,599,001 B2

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