

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

PLAID TECHNOLOGIES, INC.,  
Petitioner,

v.

YODLEE, INC. and YODLEE.COM, INC.,  
Patent Owner.

---

Case IPR2016-00275  
Patent 6,199,077 B1

---

Before SALLY C. MEDLEY, MICHAEL R. ZECHER, and  
JOHN A. HUDALLA, *Administrative Patent Judges*.

HUDALLA, *Administrative Patent Judge*.

DECISION  
Denying Petitioner's Request for Rehearing  
*37 C.F.R. § 42.71(d)*

I. INTRODUCTION

Petitioner, Plaid Technologies, Inc. ("Plaid"), filed a Petition (Paper 1, "Pet.") requesting an *inter partes* review of claims 1–12 of U.S. Patent No. 6,199,077 B1 ("the '077 patent," Ex. 1001). Plaid had been served with the complaint in the related district court case on December 2,

2014. *See* Pet. 2 (citing Ex. 1002). Yodlee, Inc. and Yodlee.com, Inc. (“Yodlee”) filed a Preliminary Response. Paper 11 (“Prelim. Resp.”).

Plaid’s Petition was accorded a filing date of December 3, 2015. Paper 3, 1. Subsequently, Plaid filed a motion to change the filing date accorded to the Petition from December 3, 2015, to December 2, 2015. Paper 9 (“Mot.”). Yodlee filed an opposition to the motion. Paper 10 (“Opp.”). Plaid filed a reply in support of its motion. Paper 13 (“Reply”).

We denied Plaid’s motion to change the filing date accorded to the Petition, and we denied institution of an *inter partes* review as to any of the asserted grounds, because the Petition was time-barred under 35 U.S.C. § 315(b). Paper 15 (“Dec.”). Plaid filed a Request for Rehearing asking that we reconsider our Decision in this regard. Paper 16 (“Req. Reh’g.”).

We grant Plaid’s request insofar as we have reconsidered our Decision in light of the argument presented in the Request for Rehearing, but we decline to modify our previous Decision.

## II. ANALYSIS

When reconsidering a decision on institution, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may be determined if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 1315-16 (Fed. Cir. 2000). The party requesting rehearing has the burden of showing the decision should be modified, which

includes specifically identifying all matters the party believes we misapprehended or overlooked. 37 C.F.R. § 42.71(d).

Plaid contends our Decision “misapprehends the law regarding [§ 315(b)] by reading regulatory requirements into that statute and creating inconsistency with other Board opinions.” Req. Reh’g. 1. Specifically, Plaid focuses on our determination that December 3, 2015, was the earliest date by which Plaid satisfied the service requirement for according the Petition a filing date under 37 C.F.R. §§ 42.105(a), 42.106(a). *See* Dec. 6–7. This date was after the one-year deadline in this case under § 315(b), which was December 2, 2015. *Id.* at 4. Plaid contends we wrongly determined that “service is a statutory requirement” because “the service requirements of 35 U.S.C. §32(a) and 37 C.F.R. §§ 42.105(a), 42.106(a) are not incorporated into § 315(b).” Req. Reh’g 3–4. As such, Plaid contends we effectively “eliminate[d] any discretion to excuse ‘late service’ [under 37 C.F.R. § 42.5(b) and (c)(3),] a finding that is contrary to many of the Board’s past decisions.” *Id.* at 5.

Plaid’s arguments do not persuade us of an abuse of discretion in our treatment of the service issue. Our regulations state that a filing date will not be accorded to a Petition until, among other things, service is effected. *See* 37 C.F.R. §§ 42.105(a), 42.106(a). The undisputed evidence put forth by Plaid indicates that it did not attempt to serve Yodlee with the Petition and supporting evidence until December 3, 2015. *See* Req. Reh’g 2; Ex. 1022 ¶ 9. In our Decision, we applied the regulations to the particular facts of this case and “determine[d] that December 3, 201[5], is the earliest date by which Plaid satisfied the service requirement for according the Petition a filing date.” Dec. 7 (citing 37 C.F.R. §§ 42.105(a), 42.106(a)). Therefore,

we maintained the initial filing date accorded to the Petition, which was one day after the statutory deadline under § 315(b), and we termed Plaid’s service activities to be “late service.”<sup>1</sup> Dec. 6–7. Indeed, Plaid would have had no reason to file a motion to change the filing date had its actions not been “late.”

Moreover, our Decision expressly stated that we did not need to “address whether, under appropriate circumstances, we have authority to grant an earlier filing date.” Dec. 8. Rather, our Decision focused on whether Plaid had shown good cause to waive the service requirements imposed by 37 C.F.R. §§ 42.105(a) and 42.106(a). *Id.* at 8–10. Irrespective of the interplay among the relevant regulations and statutory deadline under § 315(b), we found that Plaid had not shown good cause and that it was not in the interests of justice to excuse Plaid’s late service under 37 C.F.R. § 42.5(b) and (c)(3). *See id.* Among other reasons, we were not persuaded that waiting for potential changes from a declarant constituted good cause for Plaid to delay its filing and eventual service of the Petition and supporting evidence. *See* Dec. 8–9. We also weighed the potential

---

<sup>1</sup> Plaid contends we determined “that service on the same day as filing is a statutory requirement.” Req. Reh’g 4–5. We are not aware of any part of Decision that discusses *same day* service.

prejudice<sup>2</sup> to each party and found that, although the “considerations mirror[ed] one another, . . . Plaid had control over the fate of the Petition, whereas Yodlee did not.” *See id.* at 9–10. Therefore, Plaid’s argument that we premised our Decision on a determination that service is a requirement for “fil[ing]” under § 315(b) is misplaced. Furthermore, the fact that we considered whether Plaid had shown good cause refutes Plaid’s assertion (*see* Reh’g Req. 4–6) that we misconstrued § 315(b) in a way that squelches our authority to excuse late actions and contravenes prior Board decisions. Because our Decision was based on the threshold issue of whether Plaid had shown good cause to excuse its late service of the Petition and supporting evidence, we could not have, and did not, erroneously interpret § 315(b), contrary to Plaid’s argument.

Plaid also argues that we misapprehended § 315(b) by wrongly incorporating the “complete petition” requirements of 37 C.F.R. §§ 42.104 and 42.106(a) into this statute. Reh’g Req. 7–8. Plaid contends these regulations do not prevent us “from finding that Petitioner ‘filed’ the ’077 Petition within one-year of being served with a complaint when the ’077 Petition was uploaded and the fee was paid.” *Id.* at 8. Plaid further contends that the subset of Petition papers that it was able to file before midnight on

---

<sup>2</sup> We do not agree with Plaid’s characterization that our Decision wrongly “focuse[d] on comparing whether the ’077 Petition was instituted versus not instituted in evaluating whether there is prejudice.” Reh’g Req. 6–7. Our prejudice analysis made no mention of an instituted *inter partes* review proceeding; rather, we considered the case in which the Petition would “go forward” despite its untimeliness so it could be considered on its merits. Dec. 9–10. We weighed this against the possibility that “Plaid’s Petition [would] be time-barred if we d[id] not excuse the late service.” *Id.* at 10.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.