

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

H&S MANUFACTURING COMPANY, INC.,
Petitioner,

v.

OXBO INTERNATIONAL CORPORATION,
Patent Owner.

Case IPR2016-00950
Patent 8,166,739 B2

Before PHILLIP J. KAUFFMAN, JAMES A. TARTAL, and
KEVIN W. CHERRY, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

ORDER

Conduct of the Proceeding
37 C.F.R. §§ 42.5, 42.20(b)

A conference call was held on December 6, 2016, between respective counsel for Petitioner, H&S Manufacturing Company, Inc., Patent Owner, Oxbo International Corporation, and Judges Kauffman, Tartal, and Cherry. Petitioner seeks authorization to file a Motion for leave to file a Request for Rehearing of the Decision Instituting *Inter Partes* Review in this proceeding outside of the time provided by 37 C.F.R. § 42.71(d)(1). Patent Owner opposed Petitioner's request.

The Institution Decision was entered on November 2, 2016. Paper 7. Pursuant to 37 C.F.R. § 42.71(d)(1), a request for rehearing of a decision to institute a trial must be filed within 14 days of the entry of that decision. There is no dispute that Petitioner did not file a request for rehearing within the time provided, however, 37 C.F.R. § 42.5(c)(3) further provides that “[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.”

Petitioner offers two reasons it contends it would show in a motion as good cause and in the interests of justice for late filing of its request for rehearing. First Petitioner asserts it did not appreciate that the time provided for filing a request for rehearing of a decision instituting trial (14 days) was different from the time provided for filing a request for rehearing of a decision denying institution (30 days). *See* 37 C.F.R. § 42.71(d). Second, Petitioner asserts that it seeks to raise the same issues in this proceeding in its request for rehearing that it seeks to raise in requests for rehearing in other proceedings concerning other patents in which institution of *inter partes* review was denied. Petitioner suggests that it was only after

reviewing the issues raised in these related proceedings that it decided strategically that it should request rehearing in this proceeding based on the same arguments. Petitioner further suggests it would be more efficient if the issues were presented and resolved in all of the proceedings.

Patent Owner contends that Petitioner effectively seeks to obviate the need to comply with the time limit for requesting a rehearing of an institution decision merely because Petitioner later decides to seek rehearing in another proceeding. Patent Owner further argues it would be prejudiced by introducing uncertainty over whether additional grounds of unpatentability will be instituted at this stage of the proceeding when it is in the process of preparing a response. Petitioner, however, represented that it was willing to adjust the schedule as necessary to provide Patent Owner with the time it is entitled to for a response.

We deny Petitioner's request for authorization to file a motion for leave to file a Request for Rehearing of the Institution Decision outside of the time provided by 37 C.F.R. § 42.71(d)(1). First, we are not persuaded that a party's failure to identify and comply with a time limit clearly articulated in our rules supports a showing of good cause for excusing such late action. Second, a shorter period of time for filing a request for rehearing in a proceeding that is instituted, as opposed to one in which institution is denied, is supported by the need to adhere to a schedule that results in a final decision within 12 months. Petitioner had the opportunity to timely request rehearing in this proceeding, but did not do so and only chose to after evaluating its arguments in other proceedings. We are not persuaded that Petitioner can show good cause or the interests of justice support

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disregarding the time limit for filing a request for rehearing of the institution decision in this proceeding.

For the foregoing reasons, it is hereby:

ORDERED that Petitioner's request for authorization to file a motion for leave to file a Request for Rehearing of the Institution Decision outside of the time provided by 37 C.F.R. § 42.71(d)(1) is denied.

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