

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KINGSTON TECHNOLOGY COMPANY, INC.,
Petitioner,

v.

POLARIS INNOVATIONS LTD.,
Patent Owner.

Case IPR2016-01622
Patent 6,850,414 B2

Before SALLY C. MEDLEY, JEAN R. HOMERE,
and KEN B. BARRETT, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

Patent Owner, on July 9, 2018, sent an email to the Board requesting an “order of the Board” interpreting 37 C.F.R. § 90.3(b)(1), the rule pertaining to the time for filing an appeal. Specifically, Patent Owner seeks clarification as to how a prospective request for rehearing will impact the time for filing an appeal in this case.

On May 29, 2018, Petitioner requested rehearing of the Final Written Decision (Paper 35) to address the effects of the Supreme Court’s decision on *SAS Inst., Inc. v. Iancu*, 584 U.S. ____ (U.S. Apr. 24, 2018). On June 11, 2018, we entered an order granting the request for rehearing and modifying the Final Written Decision. Paper 42. Patent Owner previously filed a request for rehearing (Paper 36) of the original Final Written Decision, and that request was denied on April 12, 2018 (Paper 37). Patent Owner indicated in its email that it plans to file a request for rehearing of the June 11, 2018, order.

Rule 90.3—titled “Time for appeal or civil action”—provides, in pertinent part:

(a) Filing deadline. (1) For an appeal under 35 U.S.C. 141. The notice of appeal filed pursuant to 35 U.S.C. 142 must be filed with the Director of the United States Patent and Trademark Office no later than sixty-three (63) days after the date of the final Board decision. Any notice of cross-appeal is controlled by Rule 4(a)(3) of the Federal Rules of Appellate Procedure, and any other requirement imposed by the Rules of the United States Court of Appeals for the Federal Circuit.

. . .

(b) Time computation. (1) Rehearing. A timely request for rehearing will reset the time for appeal or civil action to no later than sixty-three (63) days after action on the request. Any subsequent request for rehearing from the same party in the same proceeding will not reset the time for seeking judicial

review, unless the additional request is permitted by order of the Board. . . .

37 C.F.R. §90.3. The “timely request for rehearing” and “[a]ny subsequent request for rehearing” of Rule 90.3(b)(1) refers to a request for rehearing of “the final Board decision” of Rule 90.3(a)(1). The Order of June 11, 2018, modified the Final Written Decision and, therefore, that June 11 Order became the final Board decision within the meaning of Rule 90.3. *See* 37 C.F.R. §42.2 (“*Final* means final for the purpose of judicial review to the extent available. A decision is final only if it disposes of all necessary issues with regard to the party seeking judicial review, and does not indicate that further action is required.”). Rule 90.3 should be applied in that light. As Patent Owner noted in its email, Rule 42.71(d) governs any request for rehearing of that Order.

The parties also are encouraged to review Section 1216 of the Manual of Patent Examining Procedure (MPEP), which sets forth procedures pertaining to and the Office’s position regarding Rule 90.3 and judicial review.

ORDER

For the foregoing reasons, it is

ORDERED that the parties shall comply with 37 C.F.R. § 42.71(d) regarding any requests for rehearing of the Order of June 11, 2018;

FURTHER ORDERED that the parties are not authorized to file a request for rehearing of any other decision or order; and

FURTHER ORDERED that the parties shall comply with 37 C.F.R. § 90.2 and § 90.3 regarding any appeal in this *inter partes* review.

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