

Filed on behalf of Intellectual Ventures I, LLC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ERICSSON INC. AND TELEFONAKTIEBOLAGET LM ERICSSON
Petitioners

v.

INTELLECTUAL VENTURES I LLC
Patent Owner

Case IPR2018-00727
Patent No. 6,628,629

**PATENT OWNER'S UNOPPOSED MOTION TO EXCUSE LATE FILING
OF OBJECTIONS TO EVIDENCE**

I. INTRODUCTION

On October 5, 2018, the Board issued a decision instituting *inter partes* review. Paper No. 8. This triggered the start of a ten business day period for Patent Owner to file objections to the evidence submitted with the Petition. 37 C.F.R. § 42.64(b)(1). The objections were due to be filed, therefore, on October 22, 2018 (accounting for Columbus Day falling on October 8th).

Patent Owner's objections were not filed until October 24, 2018 – two days after the due date. Patent Owner explained this to counsel for Petitioners who stated they would not oppose this motion. Patent Owner subsequently requested permission from the Board for leave to file this motion. The Board then authorized filing of this motion.

The Board may excuse a party's late action "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(c)(3). For the reasons discussed below, Patent Owner respectfully requests that the Board exercise its discretion to excuse the late filing of objections to evidence.

II. THERE IS GOOD CAUSE TO EXCUSE PATENT OWNER'S LATE FILING

On the day that the objections were due (October 22, 2018), they were ready to be filed. On that day, however, there was an inadvertent miscommunication

between Patent Owner's counsel and administrative staff. Because of this miscommunication, the objections were not filed on October 22nd. Two days later (October 24, 2018), Patent Owner's counsel recognized this oversight and immediately filed the objections.

Patent Owner apologizes for the oversight and submits that because the delay was inadvertent and the objections were immediately filed upon recognizing this, there is good cause to excuse the late filing.

III. IT IS IN THE INTERESTS OF JUSTICE TO CONSIDER PATENT OWNER'S OBJECTIONS TO PETITIONERS' EVIDENCE

In the event the Board finds that Patent Owner's reasons for the delay do not suffice for good cause, Patent Owner respectfully requests that the Board excuse the late filing in the interests of justice. When considering circumstances to determine whether the interests of justice support excusing a late action, the Board may look to whether the non-filing party suffered any actual prejudice as a result of the late filing. *See Nevro Corp. v. Boston Scientific Neuromodulation Corp.*, IPR2017-01812, Paper 21 at 3 (P.T.A.B. April 12, 2018); *Westinghouse Air Brake Tech's Corp. v. Siemens Industry, Inc.*, IPR2017-02044, Paper 16 at 3 (P.T.A.B. February 26, 2018); *US Endodontics, LLC, v. Gold Standard Instruments, LLC*, IPR2015-00632, Paper 38 at 3 (P.T.A.B. August 31, 2005); *Standard Innovation Corp. v. Lelo, Inc.*, IPR2014-00148, Paper 19 at 3 (PTAB Sept. 15, 2014). In this

instance, the present *inter partes* review is in the early stages, as the institution decision was issued only one month ago. Patent Owner respectfully submits that Petitioner will have sufficient time to address the objections as necessary, and no other due dates will be impacted. Furthermore, this motion is unopposed.

In addition, striking the objections would prejudice Patent Owner by eliminating its ability to file a motion to exclude. It may also potentially burden the Board with exhibits that do not comport with the rules of evidence. Such an outcome would not further the interests of justice.

IV. CONCLUSION

For the foregoing reasons, Patent Owner respectfully asks the Board to exercise its discretion under 37 C.F.R. § 42.5(c)(3) and excuse the late filing of Patent Owner's objections to evidence submitted with the Petition.

Respectfully submitted,

Dated: November 6, 2018

/Peter J. McAndrews/
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Patent Owner's Unopposed Motion to Excuse Late Filing** were served on November 6, 2018 via email to counsel for Petitioners at the following:

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