

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AXIS COMMUNICATIONS AB, CANON INC.,
and CANON U.S.A., INC.,
Petitioner,

v.

AVIGILON FORTRESS CORPORATION,
Patent Owner.

Cases IPR2019-00235, IPR2019-00236¹
Patent 7,868,912 B2

Before GEORGIANNA W. BRADEN, KIMBERLY McGRAW, and
JESSICA C. KAISER, *Administrative Patent Judges*.

McGRAW, *Administrative Patent Judge*.

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

¹ This Order addresses issues in both above-referenced proceedings. We exercise our discretion to issue a single order in these two proceedings for convenience. The parties, however, are not authorized to use this style heading for any subsequent papers.

I. DISCUSSION

Patent Owner's Preliminary Responses in IPR2019-00235 and IPR2019-00236 were due to be filed no later than March 6, 2019. In an email to the Board dated March 7, 2019, Patent Owner states that some of the documents filed in IPR2019-00235 were not processed and inputted into the system until 12:01AM EST and that some of the documents in filed in IPR2019-00236 were not processed and inputted into the system until 12:08 EST.² Ex. 3001. Patent Owner requests that the Board accept for filing the late-filed documents, or in the alternative, extend Patent Owner's deadline for filing the Preliminary Response in each case by one day.

A late filing will be excused either upon a showing of good cause or upon a Board decision that consideration on the merits of the matter addressed in the late filing would be in the interests of justice. *See* 37 C.F.R. § 42.5(c)(3) ("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.").

We are persuaded that the interests of justice would be served by considering the merits of Patent Owner's Preliminary Response. Petitioner does not oppose Patent Owner's request. *See* Ex. 3001. Given that the delay in filing was less than 10 minutes, the prejudice to Petitioner, if any, from considering the late-filed documents would be slight. The prejudice to

² A review of PTAB-E2E shows that: (1) in IPR2017-00235, the Preliminary Response and Exhibits 2004–2009 were timely filed on March 6, 2019, but Exhibits 2010–2011 were not filed until March 7, 2019 and (2) in IPR201007-00236, Exhibit 2004 was timely filed on March 6, 2019, but the Preliminary Response and Exhibits 2005–2011 were not filed until March 7, 2019.

IPR2019-00235, IPR2019-00236 (Patent 7,868,912 B2)

Patent Owner from striking the Preliminary Responses or associated exhibits, on the other hand, would be significant, because Patent Owner would lose its opportunity to argue against the institution of an *inter partes* review. Additionally, institution decisions that consider Patent Owner's arguments will benefit both parties by providing clarity as to the Board's view of the evidence and arguments.

Accordingly, under the facts presented and for the foregoing reasons, we determine that consideration on the merits of Patent Owner's late-filed documents would be in the interest of justice and, therefore, Patent Owner's late filing is excused under § 42.5(c)(3).

The parties are cautioned, however, that the Board expects compliance in the future with all deadlines.

II. ORDER

It is hereby

ORDERED that, pursuant to 37 C.F.R. § 42.5(c)(3), the consideration of the merits of the Preliminary Response and associated Exhibits in each of the above referenced proceedings is in the interests of justice; and

FURTHER ORDERED that Patent Owner's late filing of Exhibits 2010–2011 in IPR2019-00235 is excused; and

FURTHER ORDERED that Patent Owner's late filing of its Preliminary Response and Exhibits 2005–2011 in IPR2019-00236 is excused.

IPR2019-00235, IPR2019-00236 (Patent 7,868,912 B2)

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