

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION,
Petitioner,

v.

FG SRC LLC,
Patent Owner.

Case No. IPR2020-01449
Patent 7,149,867

Before KALYAN K. DESHPANDE, GREGG I. ANDERSON, and
KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

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

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On November 4, 2020, Patent Owner requested a conference call seeking an extension of time to file its Preliminary Response under 37 C.F.R. § 42.5(c). Ex. 3001. Patent Owner requests authorization to file a motion to extend the deadline for filing its Preliminary Response from November 17, 2020 to December 4, 2020, due to late-arising scheduling conflicts. *Id.* Patent Owner indicated that Petitioner opposed the request. *Id.*

On November 6, 2020, a conference call between respective counsel for the parties and Judges Szpondowski, Deshpande, and Anderson. During the call, Patent Owner argued that it requests the extension due to conflicts and overlapping deadlines with its attorneys' schedules, including a hearing in unrelated IPR2019-00143 that is scheduled for November 18, 2020, as well as various briefing and other matters in related district court matters and at the Federal Circuit. Patent Owner stated that these conflicts and overlapping deadlines affect its counsel of record in this case. Patent Owner expressed that the requested two and a half week extension should not have any impact on the schedule or result in any prejudice to Petitioner. Patent Owner also indicated that it would be amendable to a shorter extension, but selected two and a half weeks in part due to the upcoming Thanksgiving holiday. Patent Owner represented that it does not intend for the extension to impact its positions on the exercise of discretion to deny institution based on *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) ("*Fintiv*"). Rather, Patent Owner indicates that it, if it chooses to argue in favor of exercising discretion to deny based on a holistic evaluation of the *Fintiv* factors, it would argue the timing based on the original schedule.

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Petitioner opposes the extension for several reasons, including: (1) there are no extraordinary circumstances present here, just normal litigation deadlines; (2) the Petition was expeditiously filed in an effort to ensure any *inter partes* review took precedence over the related district court matter; and (3) Patent Owner has known since August about the upcoming hearing in IPR2019-00143 and only waited until now to raise the issue. Petitioner also expressed that it intends to seek a stay in the related district court matter, as well as to withdraw its overlapping invalidity claims in the related district court matter, if *inter partes* review is instituted. *See* Petition at 7.

Under 37 C.F.R. § 42.5(c)(1), we may modify the default times set by rules, including the default time for Patent Owner to file its Preliminary Response under 37 C.F.R. § 42.107(b). We acknowledge Petitioner's arguments, but are not persuaded of prejudice to Petitioner or meaningful impact to the schedule or in the related district court matter if we grant the extension. Further, in light of the intervening Thanksgiving holiday, we are inclined to grant Patent Owner's requested two and a half week extension, rather than a shorter extension. Therefore, based on these particular circumstances, we are satisfied that Patent Owner has shown good cause for the requested extension. *See* 37 C.F.R. § 42.5(c). Accordingly, Patent Owner's request for extension is *granted*. No further extensions will be granted.

In consideration of the foregoing, it is hereby:

ORDERED that the due date for Patent Owner's Preliminary Response is extended to December 4, 2020.

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