

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TENNANT COMPANY,  
Petitioner,

v.

OXYGENATOR WATER TECHNOLOGIES, INC.,  
Patent Owner.

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IPR2021-00625  
Patent RE 45,415 E

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Before KRISTINA M. KALAN, CHRISTOPHER M. KAISER, and  
WESLEY B. DERRICK, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

DECISION  
Patent Owner's Motion Requesting Acceptance of Submission  
*37 C.F.R. § 42.5(c)(3)*

IPR2021-00625  
Patent RE 45,415 E

Patent Owner, in an e-mail dated Friday, November 19, 2021, notified the Board that “we have been unable to access the E2E filing system this evening, and have served our Patent Owner Response, an accompanying motion to seal, Exhibits 2116–2196, and an updated exhibit list. We intend to file a motion requesting acceptance of this submission once PTAB E2E is available.” Ex. A. On Monday, November 22, 2021, Patent Owner filed a motion (Paper 33, “Mot.”) to accord a filing date of November 19, 2021 to its Response (Papers 34 (private), 35 (public)), Motion to Seal (Paper 37), Exhibit List (Paper 36) and all accompanying exhibits (Exs. 2116–2196). For the reasons stated below, Patent Owner’s motion is *granted*.

The deadline for Patent Owner to file the Response was midnight on Friday, November 19, 2021. *See* Paper 10 (Scheduling Order); Paper 32 (Joint Stipulation to Modify the Schedule). PTAB E2E indicates that the Response, Motion to Seal, Exhibit List, and Exhibits 2116–2196 were filed on Monday, November 22, 2021.

In support of its motion, Patent Owner’s counsel affirms that he repeatedly received an error message while attempting to access the PTAB E2E system on Friday, November 19, 2021. Mot. 1. Patent Owner’s counsel states that he “timely served all above-identified documents on opposing counsel via email at 10:14 PM CST on November 19<sup>th</sup>,” and completed the filing on Monday, November 22, 2021. *Id.*

A late action will be excused either 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. § 42.5(c)(3). This rule must be construed to secure the just, speedy, and inexpensive resolution of every proceeding. 37 C.F.R. § 42.1(b). Weighing the prejudice to Petitioner of the delay in

IPR2021-00625  
Patent RE 45,415 E

filing Patent Owner's documents against the prejudice to Patent Owner of not considering the Response and additional filings, we determine that it would be in the interests of justice to excuse Patent Owner's late action. Petitioner has not informed us of any opposition to Patent Owner's motion, but, even assuming Petitioner did oppose the motion, we still would conclude that treating Patent Owner's filings as timely was in the interests of justice.

The Parties are also reminded of the duty to make a good faith effort to meet deadlines. *See* 37 C.F.R. §§ 42.5(c)(3), 42.11, 42.12.

Based on the foregoing, it is hereby

ORDERED that Patent Owner's motion to accept as timely its submission of the Response and all accompanying papers and exhibits is *granted*.

IPR2021-00625  
Patent RE 45,415 E

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IPR2021-00625  
Patent RE 45,415 E

## EXHIBIT A

**From:** Nate D Louwagie <[NLouwagie@carlsoncaspers.com](mailto:NLouwagie@carlsoncaspers.com)>  
**Sent:** Friday, November 19, 2021 11:16 PM  
**To:** Trials <[Trials@USPTO.GOV](mailto:Trials@USPTO.GOV)>  
**Cc:** Johnson, R. Scott <[RSJohnson@fredlaw.com](mailto:RSJohnson@fredlaw.com)>; Steinert, Adam <[ASteinert@fredlaw.com](mailto:ASteinert@fredlaw.com)>; Patton, Thomas <[TPatton@fredlaw.com](mailto:TPatton@fredlaw.com)>; \_Tennant Company/Oxygenator Water Technologies <[OWT@fredlaw.com](mailto:OWT@fredlaw.com)>; OWT <[OWT@carlsoncaspers.com](mailto:OWT@carlsoncaspers.com)>  
**Subject:** IPR2021-00625 - Tennant Company v. Oxygenator Water Technologies, Inc.

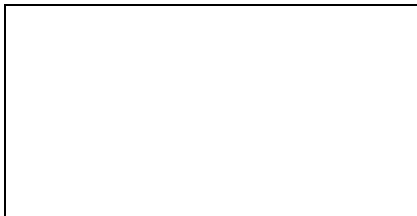
CAUTION: This email has originated from a source outside of USPTO. **PLEASE CONSIDER THE SOURCE** before responding, clicking on links, or opening attachments.

Dear Board,

I represent the Patent Owner Oxygenator Water Technologies, Inc. in the above caption matter. I write as directed by the PTAB E2E frequently asked questions system to notify the board that we have been unable to access the E2E filing system this evening, and have served our Patent Owner Response, an accompanying motion to seal, Exhibits 2116-2196, and an updated exhibit list. We intend to file a motion requesting acceptance of this submission once PTAB E2E is available.

Thank you,

Nate



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