

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC.,
Petitioner,

v.

REMBRANDT SOCIAL MEDIA, L.P.,
Patent Owner.

Case IPR2014-00415
Patent 6,415,316

Before PHILLIP J. KAUFFMAN, JENNIFER S. BISK, and
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

CLEMENTS, *Administrative Patent Judge*.

DECISION
Request for Rehearing
37 C.F.R. § 42.71(d)

I. SUMMARY

Patent Owner, Rembrandt Social Media, L.P., requests rehearing of the Board's Decision to Institute (Paper 9, "Dec.") an *inter partes* review of U.S. Patent No. 6,415,316 (Ex. 1001, "the '316 patent") entered July 7, 2014. Paper 12 ("Req. Reh'g"). For the reasons that follow, Patent Owner's request for rehearing is granted, but we determine that the Petition was properly accorded a filing date of February 6, 2014.

II. DISCUSSION

The applicable standard for a request for rehearing is set forth in 37 C.F.R. § 42.71(d), which provides in relevant part:

A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, opposition, or a reply.

Patent Owner argues that the Decision misapprehends the regulatory nature of an alleged error in service of the Petition in this case. Req. Reh'g 1-9. Specifically, Patent Owner argues that we misapprehended the standard for determining whether a failure to effect service on February 6, 2014, was "harmless" by focusing on whether Patent Owner's ability to respond was prejudiced rather than on whether the failure to follow the rule was outcome determinative. *Id.* While we do not find these particular arguments persuasive, we grant this rehearing for the purpose of revisiting our statement that "mailing via FedEx after the cut-off time on Thursday without

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electing Saturday delivery failed to comply with 37 C.F.R. § 42.105(b).”
Dec. 7.

After further analysis, we determine that Petitioner’s service of the Petition did not fail to comply with 37 C.F.R. § 42.106. Section 42.106 states that “[a] petition to institute *inter partes* review will not be accorded a filing date until the petition . . . [e]ffects service of the petition on the correspondence address of record as provided in [§] 42.105(a).” Section 42.106(a)(2) does not require compliance with § 42.105(b) for a filing date to be accorded. Thus, the Petition was properly accorded a filing date of February 6, 2014. Because there was no failure to effect service on February 6, 2014, the Petition was properly accorded a filing date of February 6, 2014.

III. CONCLUSION

For the foregoing reasons, the Board did not abuse its discretion when it determined that the Petition was properly accorded a filing date of February 6, 2014.

IV. ORDER

It is hereby
ORDERED that Patent Owner’s request for rehearing is *granted*; and
FURTHER ORDERED that the filing date accorded the Petition
remains February 6, 2014.

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