

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

UNIFIED PATENTS, INC.  
Petitioner

v.

INTELLECTUAL VENTURES II, LLC  
Patent Owner

---

U.S. Patent 6,968,459  
IPR2016-01404

---

**MOTION TO EXCUSE LATE FILING OF  
PETITIONER'S REQUEST FOR REHEARING  
UNDER 37 C.F.R. § 42.5(C)(3)**

## I. INTRODUCTION

Petitioner requests that the Board excuse Petitioner's one-day-late Request for Rehearing (Paper 35) ("Request") under 37 C.F.R. § 42.5(c)(3). Both good cause and the interests of justice support this action because: (1) Petitioner timely served its Request, (2) Petitioner attempted to timely file its Request but could not due to technical difficulties, and (3) Petitioner filed its Request the next day after the technical difficulties were resolved.

## II. FACTS

1. Petitioner's Request was due February 9, 2018—30 days after the Final Written Decision (Paper 34) was filed on January 10, 2018.

2. On February 9, 2018, Petitioner attempted to file its Request using the Patent Trial and Appeal Board End to End system ("E2E") but was unsuccessful because neither Jonathan Stroud nor Roshan Mansinghani—both employees of Petitioner that are backup counsel of record in this proceeding—had filing privileges. Neither of them knew, at that time, that they did not have filing privileges.

3. Upon realizing the error on Friday, February 9, 2018, Jonathan Stroud attempted to contact, via e-mail and telephone, James Stein and Lionel Lavenue—Petitioner's outside counsel in this proceeding that had sole filing privileges.

Neither was able to be reached prior to midnight. At that time, Mr. Stein was in the hospital with his wife, who was in labor.<sup>1</sup>

4. Mr. Stroud then e-mailed PTABE2EAdmin@uspto.gov. He also called and left a message with the Board's public number at (571) 272-7822.

5. On February 9, 2018, Mr. Stroud served its Request on Patent Owner and the Board at trials@uspto.gov.

6. The following day, February 10, 2018, Mr. Stein and Mr. Lavenue communicated with Mr. Stroud and filed the Request in E2E.

### III. ANALYSIS

Under 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.” Under these facts, Petitioner’s late action should be excused. *Valeo North America, Inc. & Valeo Embrayages v. Schaeffler Technologies AG & Co. KG*, IPR2016-00502, Paper 46 (Aug. 7, 2017) (order excusing a seven-day-late filing of a rehearing request of a final written decision).

Regarding the “good cause” prong, Petitioner took proper steps to timely file the Request, including timely accessing E2E and serving Patent Owner and the Board. Petitioner’s only misstep was a misunderstanding of which of its counsel had “primary back-up” filing privileges in E2E. Further, when notified of this

---

<sup>1</sup> The healthy child was born on February 9, 2017.

misstep, Petitioner attempted to remediate immediately, but was unable to do so, in part due to the extenuating circumstances of the counsel who had filing privileges. Patent Owner suffered no prejudice because: (1) they and the Board were timely served with the Request; and (2) Petitioner's Request necessitates no action or response by Patent Owner. Entry of the Request simply places it into a status for consideration by the panel—a status that the Request now also would have, were it to actually have been filed on February 9, 2018. Notably, the Request was actually filed on February 10, 2018 (a Saturday). Thus, neither Patent Owner nor the Board suffered any prejudice by the one-day-late filing.

Excusing the delay and considering the merits of Petitioner's Request is in the interests of justice. Parties have an opportunity to “specifically identify all matters the party believes the Board misapprehended or overlooked” in a final decision. 37 C.F.R. § 42.71(d). “This opportunity helps to ensure that we have properly considered and understood the law and underlying facts as they relate to the decision and reached a just decision.” *Valeo North America, Inc. & Valeo Embrayages v. Schaeffler Technologies AG & Co. KG*, IPR2016-00502, Paper 46, at 3 (Aug. 7, 2017). Moreover, as discussed above, no one has suffered prejudice as a result of the late filing. Finally, Petitioner promptly remedied its error, so any delay in the proceeding is outweighed by the interests in securing a just resolution

to this proceeding. *See* 37 C.F.R. § 42.1(b) (“This part shall be construed to secure the just, speedy, and inexpensive resolution of every proceeding.”)

#### IV. CONCLUSION

Pursuant to 37 C.F.R. § 42.5(c)(3), the Board should excuse Petitioner’s one-day-late Request. Both good cause and the interests of justice support this action because: (1) Petitioner timely served its Request, (2) Petitioner attempted to timely file its Request but could not due to technical difficulties, and (3) Petitioner filed its Request the next day after the technical difficulties were resolved.

Respectfully submitted,

Dated: Feb. 20, 2018

By: /Roshan S. Mansinghani/  
Roshan S. Mansinghani  
Reg. No. 62,429

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.