

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SYMANTEC CORPORATION,  
Petitioner,

v.

INTELLECTUAL VENTURES I LLC,  
Patent Owner.

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Case IPR2016-01433  
Patent 7,757,298 B2

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Before THOMAS L. GIANNETTI, HYUN J. JUNG, and  
GREGG I. ANDERSON, *Administrative Patent Judges*.

JUNG, *Administrative Patent Judge*.

DECISION  
Petitioner's Motion to Excuse Late Filing  
*37 C.F.R. § 42.5(c)(3)*

## I. INTRODUCTION

Petitioner contacted the Board via email to request that its Reply to Patent Owner's Response (Paper 16) be treated as timely filed. The email indicated that the parties had conferred, that Patent Owner did not object to Petitioner's request, and that the parties were willing to stipulate to an extension of the due date for filing Petitioner's Reply. After considering the request, Petitioner was authorized to file a motion seeking to excuse the late filing of the Reply, and because Patent Owner did not object, an opposition to the motion was not authorized.

Petitioner subsequently filed an "Unopposed Motion to Excuse the Late Filing of Petitioner's Reply to the Patent Owner Response." Paper 17 ("Mot.").

For the reasons stated below, Petitioner's motion is *granted*.

## II. DISCUSSION

The due date for Petitioner's Reply was July 19, 2017. Paper 7, 8. Our filing system indicates that Petitioner's Reply and supporting Exhibit 1035 were filed early on July 20, 2017. *See also* Mot. 1, ¶ 4. According to Petitioner, it experienced technical difficulties in filing its paper and exhibit. Mot. 1, ¶¶ 2–3. Petitioner argues that the technical difficulties provide good cause for excusing the late filing. *Id.* at 2–3. In addition, Petitioner argues that excusing the late filing would be in the interests of justice because Patent Owner could not have suffered any actual prejudice from "not hav[ing] these documents a few hours earlier." *Id.* at 4–5. Petitioner indicates that to obviate any possible prejudice, it has offered to extend any subsequent deadline by one day. *Id.* at 5.

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 interest of justice. 37 C.F.R. § 42.5(c)(3). Weighing the prejudice to Patent Owner of the few hours delay in filing the Petitioner's Reply and Exhibit 1035 against the prejudice to Petitioner of not considering the late-filed paper and exhibit, we determine that it is in the interest of justice to excuse Petitioner's late action in this proceeding. We consider it to be in the interest of justice to have the benefit of Petitioner's arguments in its Reply as part of the record, and refusal to consider them as a consequence of a few hours' delay would not be in the interest of justice.

### III. ORDER

In consideration of the foregoing, it is hereby ORDERED that Petitioner's "Unopposed Motion to Excuse the Late Filing of Petitioner's Reply to the Patent Owner Response" is *granted*.

IPR2016-01433  
Patent 7,757,298 B2

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