

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

T-MOBILE US, INC. and T-MOBILE USA, INC.,
Petitioner,

v.

BARKAN WIRELESS ACCESS TECHNOLOGIES, L.P.,
Patent Owner.

Case IPR2017-01099
Patent 9,042,306 B2

Before MEREDITH C. PETRAVICK, JOHN A. HUDALLA, and
SHARON FENICK, *Administrative Patent Judges*.

FENICK, *Administrative Patent Judge*.

DECISION
Granting Motion to Excuse Late Filing
37 C.F.R. § 42.5(c)(3)

INTRODUCTION

On November 27, 2018, Patent Owner filed a motion¹ seeking to excuse the late filing of its rehearing request. Paper 45 (“Mot. to Excuse”). Patent Owner indicated that it had conferred with Petitioner to determine whether Petitioner opposes the motion, and further indicated that Petitioner does not oppose the motion. *Id.* at 1.

On October 3, 2018, we entered a final written decision in this case. Paper 42. Patent Owner indicates that, on November 2, 2018, it uploaded a rehearing request to the PTAB End to End (E2E) system, believing that the rehearing request document was attached. Mot. to Excuse at 1. A docket entry was generated in E2E and a filing notification was received via email. *Id.* at 1–2. However, the document was not uploaded. *Id.* at 2. Patent Owner asserts that this occurred inadvertently and despite diligence on the part of the filer. *Id.* Patent Owner contemporaneously served Petitioner with the rehearing request. *Id.*

Patent Owner argues that good cause exists for excusing delays when a filing party makes inadvertent errors in uploading documents to the Board’s electronic systems. *Id.* at 1–3. In addition, Patent Owner argues that excusing the delay would be in the interest of justice because Patent Owner would be unduly prejudiced if the rehearing request were not considered by the Board. *Id.* at 3.

¹ The Board authorized Patent Owner to file the motion in an Order issued on November 20, 2017. Paper 43. Petitioner was authorized to file an opposition, but did not do so.

DISCUSSION

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.”

Given the circumstance, we determine good cause exists to excuse the late filing of Patent Owner’s rehearing request. The rehearing request was served timely on Petitioner, and an attempt, albeit unsuccessful, was made to file timely the rehearing request. Patent Owner’s error was inadvertent. In addition, it is in the interests of justice to excuse the late filing of Patent Owner’s rehearing request. Patent Owner would be unduly prejudiced if its rehearing request were not considered, and Petitioner does not oppose the motion to excuse the late filing.

Patent Owner filed a rehearing request with its motion to excuse on November 27, 2018. The rehearing request appears as Paper 44 in the record.

ORDER

It is:

ORDERED that Patent Owner’s motion to excuse (Paper 45) is *granted*.

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PETITIONER:

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