

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC.,
Petitioner,

v.

CUSTOMPLAY, LLC,
Patent Owner.

IPR2018-01496 (Patent 8,494,346 B2)
IPR2018-01497 (Patent 9,124,950 B2)
IPR2018-01498 (Patent 9,380,282 B2)

Before J. JOHN LEE, JESSICA C. KAISER, and JOHN R. KENNY,
Administrative Patent Judges.

LEE, *Administrative Patent Judge.*

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

IPR2018-01496 (Patent 8,494,346 B2)
IPR2018-01497 (Patent 9,124,950 B2)
IPR2018-01498 (Patent 9,380,282 B2)

On April 3, 2020, we extended the deadline for filing a request for rehearing of our Final Written Decision in each of the above-captioned cases by 30 days. *See, e.g., Amazon.com, Inc. v. CustomPlay, LLC*, IPR2018-01496, Paper 35 (PTAB Apr. 3, 2020). Patent Owner contacted the Board via email to request a further extension of the deadline to June 1, 2020, in each case.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, ___ Stat. ___ (2020) (“CARES Act”) was enacted. Section 12004(a) of the CARES Act authorizes the Director to “toll, waive, adjust, or modify” deadlines established by certain statutes and regulations, which include the deadlines relevant here. Pursuant to that authority, on March 31, 2020, the Office issued the Notice of Waiver of Patent-Related Timing Deadlines under the Coronavirus Aid, Relief, and Economic Security Act. On April 28, 2020, the Office issued the Notice of Extended Waiver of Patent-Related Timing Deadlines under the Coronavirus Aid, Relief, and Economic Security Act and Other Relief Available to Patent Applicants and Patentees* (“Second CARES Act Notice”).

The Second CARES Act Notice provides that certain filings due between March 27, 2020, and April 30, 2020, will be considered timely if filed on or before June 1, 2020. Second CARES Act Notice 2. To qualify for this extension, the filing must be accompanied by a statement that the delay in filing was due to the COVID-19 outbreak. *Id.* A delay “due to the COVID-19 outbreak” is defined as occurring “if a . . . patent owner . . . was

* The Second CARES Act Notice is available at <https://www.uspto.gov/sites/default/files/documents/Patents-Notice-CARES-Act-2020-04.pdf>.

IPR2018-01496 (Patent 8,494,346 B2)
IPR2018-01497 (Patent 9,124,950 B2)
IPR2018-01498 (Patent 9,380,282 B2)

personally affected by the COVID-19 outbreak, including, without limitation, through office closures, cash flow interruptions, inaccessibility of files or other materials, travel delays, personal or family illness, or similar circumstances, such that the outbreak materially interfered with timely filing.” *Id.* at 2–3. Although a request for rehearing of a final written decision under 37 C.F.R. § 42.71(d) is not specifically identified as one of the filings subject to the Second CARES Act Notice, the Notice provides for requests for extensions of time in additional situations “where the COVID-19 outbreak has prevented or interfered with a filing before the Board.” Second CARES Act Notice 3.

Under 37 C.F.R. § 42.71(d), a request for rehearing of a final written decision is due within 30 days of the entry of the decision. Each of the Final Written Decisions in the above-captioned cases was entered between March 4 and March 11, 2020. *See, e.g., Amazon.com, Inc. v. CustomPlay, LLC*, IPR2018-01496, Paper 34 (PTAB Mar. 4, 2020). As noted above, we previously granted a 30-day extension for filing requests for rehearing with respect to those Decisions. Nevertheless, any such rehearing requests would still be due between March 27, 2020, and April 30, 2020. In its most recent request, Patent Owner affirmed that the COVID-19 outbreak has materially interfered with filing its rehearing requests. Based on that representation, we conclude that an additional extension to June 1, 2020, is warranted.

IPR2018-01496 (Patent 8,494,346 B2)
IPR2018-01497 (Patent 9,124,950 B2)
IPR2018-01498 (Patent 9,380,282 B2)

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the deadline for filing requests for rehearing of the Final Written Decision in each of the above-captioned cases is extended to June 1, 2020.

IPR2018-01496 (Patent 8,494,346 B2)
IPR2018-01497 (Patent 9,124,950 B2)
IPR2018-01498 (Patent 9,380,282 B2)

PETITIONER:

Colin B. Heideman
Joseph R. Re
Christie R.W. Matthaei
KNOBBE, MARTENS, OLSON & BEAR, LLP
2cbh@knobbe.com
2jrr@knobbe.com
2crw@knobbe.com

PATENT OWNER:

Bryan E. Wilson
Adam C. Underwood
CAREY RODRIGUEZ MILIAN GONYA, LLP
bwilson@careyrodriquez.com
aunderwood@careyrodriquez.com