

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EVERSTAR MERCHANDISE CO., LTD.,
Petitioner,

v.

WILLIS ELECTRIC CO., LTD.,
Patent Owner.

PGR2019-00056
Patent 10,222,037 B2

Before DEBRA K. STEPHENS, STACEY G. WHITE, and
JEFFREY W. ABRAHAM, *Administrative Patent Judges*.

ABRAHAM, *Administrative Patent Judge*.

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

On October 11, 2022, we issued a Final Written Decision on Remand. Paper 45. On Thursday, October 20, 2022, counsel for Petitioner contacted the Board via e-mail informing us that neither party received service of the Decision. Ex. 3001. Counsel for Petitioner indicated that it discovered the existence of the Decision by chance on October 19, 2022. Ex. 3001. In view of the delay in learning about the Decision, Petitioner requests that “any deadlines for appeal (whether internally at the PTAB or to the Federal Circuit) run from” October 20, 2022, rather than October 11, 2022. Ex. 3001. Petitioner indicates that Patent Owner does not oppose the request.

Pursuant to 37 C.F.R. § 42.71(d)(2), a party dissatisfied with a decision may file a request for rehearing within 30 days of the entry of a final decision. A party must also comply with this timing requirement when requesting Director review or Precedential Opinion Panel review. *See Interim Process for Director review* § 4¹; Standard Operating Procedure 2,² 5.

We have investigated this issue and determined that our notification system did not send electronic notices of the issuance of the Final Written Decision on Remand to the parties. In view of the specific circumstances in this case, we grant Petitioner’s request to extend the deadline for filing a request for rehearing under 37 C.F.R. § 42.71(d)(2). Accordingly, the deadline to file a request for rehearing of the Final Written Decision on Remand in this proceeding is November 21, 2022. This extension also

¹ Available at <https://www.uspto.gov/patents/patent-trial-and-appeal-board/interim-process-director-review>

² Available at available at <https://www.uspto.gov/sites/default/files/documents/SOP2%20R10%20FINAL.pdf> P2 R10 FINAL.pdf.

applies to a request for Director review or Precedential Opinion panel review.

With regard to Petitioner's request for an extension of the deadline for filing an appeal to the Federal Circuit, we note that 37 C.F.R. § 90.3(a) requires a notice of appeal pursuant to 35 U.S.C. § 142 must be filed no later than 63 days after the date of the final Board decision, which remains as October 11, 2022. Pursuant to Rule 90.3(b), "[a] timely request for rehearing will reset the time for appeal or civil action to no later than sixty-three (63) days after action on the request." Therefore, if either party files a request for rehearing before the November 21, 2022 deadline, such a request will reset the time for appeal to the Federal Circuit. If neither party files a timely request for rehearing, however, the parties must file a written request for an extension of time for filing an appeal to the Federal Circuit, pursuant to Rule 90.3(c) and Rule 104.2.

In consideration of the foregoing, it is hereby:

ORDERED that the deadline for filing a request for rehearing of the Final Written Decision on Remand in this proceeding is November 21, 2022. This extension also applies to a request for Director review or Precedential Opinion panel review.

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