

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

SHIELDMARK, INC.  
Petitioner,

v.

CLIFFORD A. LOWE  
Patent Owner.

---

PGR2019-00058  
Patent 10,214,664 B2

---

Before CHRISTOPHER L. CRUMBLY, JO-ANNE M. KOKOSKI, and  
SHELDON M. McGEE, *Administrative Patent Judges*.

McGEE, *Administrative Patent Judge*.

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

On April 8, 2020, the Board's electronic filing system, PTABE2E, sent an email to the parties stating that a Request for Rehearing had been filed in this proceeding. The email also indicated, in all capital letters, "THERE WERE NO DOCUMENTS SUBMITTED WITH THIS REQUEST." Ex. 3001.

On May 13, 2020, the Board contacted the parties as follows:

On April 8, 2020, it appears that Petitioner initiated the process of filing a request for rehearing in PTABE2E. However, no actual document was filed. Petitioner is requested to indicate whether it intended to file a request for rehearing, and if so, explain why no document was filed and whether it now seeks to submit a request for rehearing late. To the extent that Petitioner wishes the Board to accept the late filing of a request for rehearing, the parties shall meet and confer on that issue and propose mutually available times for a conference call on May 18–21, 2020.

The parties requested a call with the Board and on May 19, 2020, Judges Crumbley, Kokoski, and McGee held a call with counsel to address whether the Board should accept the late filing of Petitioner's Request for Rehearing. Petitioner's counsel represented Petitioner had intended to file a Request for Rehearing, believed it had timely done so, and that a copy was timely served on Patent Owner's counsel on April 8, 2020. During the conference call, Patent Owner's counsel confirmed that Patent Owner was timely served with Petitioner's Request for Rehearing on April 8, 2020, and that it opposes Petitioner's request that the Board accept the late filing of Petitioner's Request for Rehearing. Both parties indicated that they believed Petitioner's Request was properly filed with the Board until receiving the Board's May 13, 2020 email.

During the conference call, the Board authorized Petitioner to file a motion to accept the late filing of the Request for Rehearing that was served on Patent Owner April 8, 2020, along with a copy of the Request for Rehearing. The motion should explain the circumstances that led to the filing error, and set forth why good cause exists for the Board to accept the late filing. *See* 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 of the merits would be in the interests of justice.”). The motion may not exceed three pages in length and is due within five business days of the conference call, i.e., no later than May 27, 2020. We also authorized Patent Owner to file an opposition to Petitioner’s motion, also limited to three pages and due within five business days after Petitioner’s motion is filed with the Board. Patent Owner’s opposition, if filed, shall explain what prejudice Patent Owner has suffered or will suffer if Petitioner’s motion is granted.

Accordingly, it is

ORDERED that Petitioner is authorized to file a motion to accept the late filing of its Request for Rehearing, not exceeding three pages in length, along with a copy of the Request for Rehearing as served upon Patent Owner’s counsel, no later than May 27, 2020;

FURTHER ORDERED that Patent Owner is authorized to file an opposition to Petitioner’s motion, not exceeding three pages in length, within five business days after Petitioner’s motion is filed.

PGR2019-00058  
Patent 10,214,664 B2

PETITIONER:

Howard Wernow  
Rich Megley  
Joseph Sebolt  
howard.wernow@sswip.com  
rmegley@leesheikh.com  
joe.sebolt@sswip.com

PATENT OWNER:

Ray L. Weber  
Laura J Gentilcore  
rlweber@rennerkenner.com  
ljgentilcore@rennerkenner.com