UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION AND AFFIRMED NETWORKS, INC.,
Petitioners,

v.

LEMKO CORPORATION,
Patent Owner.

Case IPR2023-00529
U.S. Patent No. 7,653,414

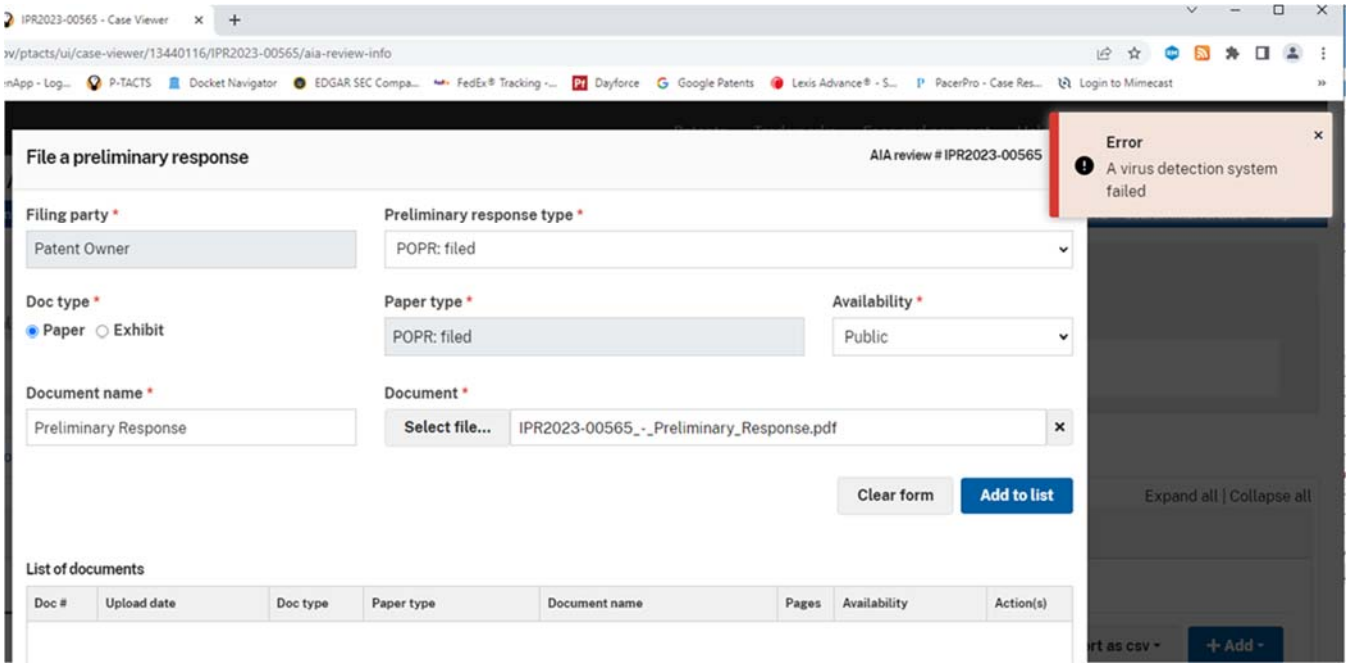
PATENT OWNER'S MOTION TO ACCEPT FILING

Patent Owner respectfully requests that the Board accept Patent Owner's one-day late filing of its Preliminary Response (Paper 7, "Preliminary Response") under 37 C.F.R. § 42.5(c)(3) because good cause exists as P-TACTS was malfunctioning up to the midnight deadline and the Preliminary Response and exhibits were timely served on Petitioners. *See* Paper 7 at 44 (indicating a patent owner preliminary response service date of June 28, 2023). This Motion was authorized by the Board's email of June 30, 2023 (Ex. 2019). Petitioners do not oppose Patent Owner's Motion.

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." Here, good cause and the interests of justice support excusing Patent Owner's one-day late filing.

On June 28, 2023, Patent Owner attempted to file its Preliminary Response and supporting exhibits via P-TACTS. However, Patent Owner encountered an error message stating "[a] virus detection system failed" (see screenshot reproduced below), which prevented Patent Owner from uploading any documents to P-TACTS.[1]

[1] This screenshot was taken when counsel for Patent Owner experienced the same error when attempting to file a preliminary response in an unrelated matter IPR2023-



Ex. 2019 at 3. The USPTO staff later informed counsel for Patent Owner that other law firms appeared to have experienced this same error with P-TACTS, suggesting that this was not an isolated incident.

Because P-TACTS was malfunctioning, Patent Owner timely served, by email, the Preliminary Response and exhibits on June 28 at 11:47 PM ET. *See* Ex 2020 at 1; Ex. 2019 at 2. This e-mail service procedure is consistent with the USPTO's guidance in its FAQs for when P-TACTS is unavailable. *See* P-TACTS FAQs at 7-8 (Oct. 7, 2022) (Question A6), available at https://www.uspto.gov/sites/default/files/documents/p-tacts_faqs_20221007.pdf.

00565. A similar error was also seen when filing a preliminary response in the instant matter and in IPR2023-00570 for Patent Owner.

Thus, Petitioners have been served with all the relevant documents in a timely manner and suffer no prejudice. Additionally, after midnight, the P-TACT system error was resolved and Patent Owner was able to successfully file its Preliminary Response and exhibits on June 29, 2023 at 12:13 AM ET. Thus, within 15 minutes of the filing deadline, all documents had been uploaded to P-TACTS. It would, therefore, be in the interests of justice to excuse the late filing and consider the Preliminary Response and exhibits.

In view of the foregoing, Patent Owner respectfully requests that the Board excuse Patent Owner's one-day late filing.

Respectfully submitted,

Dated: June 30, 2023

/James Hannah/

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CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.6(e), and pursuant to agreement by the parties that filing with the Board through the Patent Trial and Appeal Case Tracking System (P-TACTS) constitutes electronic service, that service was made on the Petitioners as detailed below.

Date of service	June 30, 2023
Manner of service	Electronic Filing (mhopkins@winston.com; bshelton@winston.com; mrueckheim@winston.com; Winston-MSFT-Lemko-IPR@winston.com)
Documents served	PATENT OWNER'S MOTION TO ACCEPT FILING
Persons Served	WINSTON & STRAWN LLP Matthew Hopkins Barry K. Shelton Michael Rueckheim

/James Hannah/
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