

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED CORP.,
Petitioner,
v.

CLEVELAND MEDICAL DEVICES INC.,
Patent Owner.

Case No. IPR2023-00565
U.S. Patent No. 10,076,269

MOTION FOR LATE SUBMISSION DUE TO A P-TACTS ERROR

In accordance with the Board’s June 29, 2023 email (Ex. 3001), Patent Owner respectfully requests that the Board excuse Patent Owner’s one-day late filing of its Preliminary Patent Owner Response (“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 Response and Papers were timely served on Petitioner. *See* Paper 3 (indicating a patent owner preliminary response filing date of June 28, 2023). Petitioner accepts (does 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, Patent Owner attempted to file its Response and supporting exhibits via P-TACTS. However, Patent Owner encountered an error message of “[a] virus detection system failed” (as shown in the screen capture reproduced below), which prevented Patent Owner from uploading any documents to P-TACTS.¹

¹ Kramer Levin also experienced the same P-TACTS error when filing preliminary responses and supporting exhibits in IPR2023-00529 and -00570. It appears that

Motion for Late Submission
IPR2023-00565 (U.S. Patent No. 10,076,269)

The screenshot shows the 'File a preliminary response' form in the P-TACTS system. The form is for AIA review # IPR2023-00565. It includes fields for Filing party (Patent Owner), Preliminary response type (POPR: filed), Doc type (Paper), Paper type (POPR: filed), Availability (Public), Document name (Preliminary Response), and Document (IPR2023-00565_-_Preliminary_Response.pdf). A red error box in the top right corner states: 'Error: A virus detection system failed'. Below the form is a 'List of documents' table.

Doc #	Upload date	Doc type	Paper type	Document name	Pages	Availability	Action(s)
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The screenshot shows the 'File a preliminary response' form in the P-TACTS system. A yellow error message at the top states: 'The user must enter the preliminary response document before entering supporting document(s) as exhibit(s)'. The form includes fields for Filing party (Patent Owner), Preliminary response type (Select a preliminary response type...), Doc type (Exhibit), Exhibit number (2001), Availability (Public), Document name (Preliminary Response), and Document (Select file...). Below the form is a 'List of documents' table.

Doc #	Upload date	Doc type	Paper type	Document name	Pages	Availability	Action(s)
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this was not an isolated incident as the USPTO staff informed Kramer Levin that other law firms also experienced the same P-TACTS error.

Because P-TACTS was malfunctioning, Patent Owner timely served, by email, the Response and exhibits on June 28 at 11:52 PM ET. *See* Ex 2012; Ex. 3001. Thus, Petitioner has been served with all the relevant documents in a timely manner and suffers no prejudice. Additionally, after midnight, the P-TACT system error was resolved and Patent Owner was able to successfully file its Response and exhibits on June 29 at 12:26 AM ET. Thus, within 30 minutes after 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 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), that service was made on the Petitioner as detailed below.

<i>Date of service</i>	June 30, 2023
<i>Manner of service</i>	Electronic Mail (tiffany.miller@us.dlapiper.com; ed.sikorski@us.dlapiper.com; jim.heintz@us.dlapiper.com DLA-ResMed-CleveMed-IPR@us.dlapiper.com)
<i>Documents served</i>	PATENT OWNER’S MOTION FOR LATE SUBMISSION
<i>Persons Served</i>	DLA Piper LLP (US) Tiffany C. Miller Edward H. Sikorski James M. Heintz

/James Hannah/
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