

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED CORP.
Petitioner,

v.

CLEVELAND MEDICAL DEVICES INC.,
Patent Owner.

IPR2023-00565
Patent 10,076,269

Before ULRIKE W. JENKS and SHERIDAN K. SNEDDEN,
Administrative Patent Judges.

JENKS, *Administrative Patent Judge.*

ORDER
Conduct of proceeding
37 C.F.R. § 42.5

I. ANALYSIS

On June 30, 2023, with Board authorization (Ex. 3001), Patent Owner filed an unopposed motion (“Mot.”) for requesting acceptance of the late submission of its Patent Owner’s Preliminary Response 37 C.F.R.

§ 42.5(c)(3). In the motion, Patent Owner asserts that good cause exists for the late filing “as P-TACTS was malfunctioning up to the midnight deadline.” Mot. 1. Additionally, Patent Owner asserts that they timely served, by email, the Patent Owner’s Preliminary Response and exhibits on June 28 at 11:52 PM ET. *See* Mot. 3 (citing Ex. 2012; Ex. 3001).

The Board may excuse and deem timely a party’s late submission. *See* 37 C.F.R. § 42.5(c)(3). Because Patent Owner’s filings were late by only a few hours and based on counsel’s statements as to the nature of the technical issues¹, we determine that good cause exists to excuse these untimely submissions. *See id.*; Mot. 2; Ex. 3001 at 1–2 (discussing technical issues experienced during filing). Thus, we grant Patent Owner’s unopposed motion that Patent Owner’s Preliminary Response and exhibits are deemed timely in this proceeding.

II. ORDER

Accordingly, it is

It is ORDERED that the Motion is granted.

¹ Our internal review confirms that there was a PTO Net system outage that prevented Patent Owner from uploading the Patent Owner Preliminary Response and exhibits in a timely manner.

IPR2023-00565
Patent 10,076,269

FOR PETITIONER:

Tiffany Miller
Edward Sikorski
James Heintz
DLA Piper LLP
tiffany.miller@dlapiper.com
ed.sikorski@dlapiper.com
jim.heintz@dlapiper.com

FOR PATENT OWNER:

James Hannah
Jeffrey Price
Jenna Fuller
Jeffrey Eng
KRAMER LEVIN NAFTALIS & FRANKEL LLP
jhannah@kramerlevin.com
jprice@kramerlevin.com
jfuller@kramerlevin.com
jeng@kramerlevin.com