

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SMA SOLAR TECHNOLOGY AMERICA, LLC,
Petitioner,

v.

TIGO ENERGY, INC.,
Patent Owner.

IPR2023-01175
Patent 9,966,848 B2

Before KRISTINA M. KALAN, ELIZABETH M. ROESEL, and
JULIA HEANEY, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

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

With prior Board authorization on November 3, 2023, Patent Owner filed an Unopposed Motion to Accept Patent Owner's Preliminary Response on November 7, 2023. Paper 9 ("Motion" or "Mot."). Patent Owner requests acceptance of the "1-day late" filing of its Preliminary Response (Paper 8) under 37 C.F.R. § 42.5(c)(3). Mot. 1–2.

"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." 37 C.F.R. § 42.5(c)(3).

Patent Owner explains that it did not file the Preliminary Response on the October 26, 2023 due date "due to an inadvertent internal communication error," more particularly, "a misunderstanding between" counsel and administrative staff. Mot. 1–2. Patent Owner adds that it "recognized its error the morning of October 27, 2023, and immediately contacted counsel for Petitioner explaining the error," and "also filed the POPR on October 27, 2023, albeit 1-day late." *Id.* at 1.

Patent Owner avers that Petitioner does not oppose Patent Owner's request for the Preliminary Response to be accepted one day late. *Id.* Patent Owner argues that good cause exists to accept the filing "because the POPR was completed before the filing deadline of October 26, 2023," "the same arguments raised in the POPR were timely filed and served on Petitioner in a related inter partes review (IPR2023-01133) on October 20, 2023," and the delay in filing "was short (1 day), inadvertent, and promptly cured." *Id.* at 1–2.

Patent Owner also argues that accepting the late filing of its Preliminary Response is in the interest of justice, and would not prejudice Petitioner. *Id.* at 2–3. Patent Owner notes that Petitioner does not oppose

the Motion. *Id.* at 1. Patent Owner concludes that it would be in the interests of justice to accept Patent Owner's late filing and consider the Preliminary Response, as it "may help simplify and clarify the issues before the Board" and "help the Board determine whether there is a reason to institute trial." *Id.* at 3. Although Patent Owner does not specifically reference Exhibit 2001, filed contemporaneously with the Preliminary Response on October 27, 2023, we understand Patent Owner's request to encompass acceptance of late filing of Exhibit 2001 as well.

Patent Owner persuades us that it would be in the interests of justice to accept the late filing of the Preliminary Response and associated exhibit under 37 C.F.R. § 42.5(c)(3).

Accordingly, it is

ORDERED that Patent Owner's Unopposed Motion to Accept Patent Owner's Preliminary Response and associated exhibit is *granted*.

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