

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AYLO FREESITES LTD,
Petitioner,

v.

DISH TECHNOLOGIES L.L.C.,
Patent Owner.

IPR2024-00044
Patent 11,470,138 B2

Before JOHN A. HUDALLA and JULIET MITCHELL DIRBA,
Administrative Patent Judges.

HUDALLA, *Administrative Patent Judge.*

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

On January 23, 2024, Patent Owner sent an email to Trials@uspto.gov seeking leave to file a retroactive motion for extension of time to file Patent Owner's Preliminary Response (Paper 6) in this case, or alternatively seeking that we excuse Patent Owner's late filing of the Preliminary Response. *See* Ex. 3001 (Patent Owner's email dated Jan. 23, 2024). Patent Owner states that it filed the Preliminary Response at 12:03 AM on January 19, 2024, which was after the deadline of January 18, 2024. *See*

also Paper 3 (setting deadline). Patent Owner notes that this filing was the only one among the preliminary responses in six related cases that was not filed timely. Patent Owner argues that it believes good cause supports its request because “the delay was short (3 minutes) and Petitioner was not prejudiced, based on the substantial similarity between the [Preliminary Response] for IPR2024-00044 and the 5 others that were timely filed, and because no response is permitted to the [preliminary responses] as of right.” Patent Owner represents that Petitioner does not oppose its request.

We may excuse a late action by a party based on a showing of good cause or based on our determination that consideration on the merits would be in the interests of justice. 37 C.F.R. § 42.5(c)(3). Although Patent Owner has not shown good cause in this instance, we determine that it would be in the interests of justice to consider Patent Owner’s Preliminary Response and its supporting exhibits. Petitioner suffered no prejudice resulting from Patent Owner’s late filing, which was completed only three minutes past the deadline. And, importantly, Petitioner does not oppose Patent Owner’s request. Thus, we excuse Patent Owner’s late filing and treat the Preliminary Response and its supporting exhibits as if they had been filed timely. Notwithstanding, we caution the parties that the Board expects compliance with all future deadlines.

Accordingly, it is

ORDERED that Patent Owner’s late filing of the Preliminary Response (Paper 6) is excused, and the Board will treat Patent Owner’s Preliminary Response and its supporting exhibits as if they had been filed timely.

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PETITIONER:

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