UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

BROADPHONE LLC,
Patent Owner.

Case IPR2024-00153
U.S. Patent No. 8,170,583

PATENT OWNER'S MOTION[1] TO EXCUSE LATE FILING OF ITS PRELIMINARY RESPONSE BY ONE DAY

[1] Petitioner has not stated any grounds for opposing this motion or requested relief but indicated it would take a position after reviewing the motion as-filed.

PATENT OWNER'S EXHIBIT LIST

Ex.	Description
2001	Email correspondence between the Board and Patent Owner's counsel, dated February 21-22, 2024
2002	Email correspondence between Patent Owner's counsel and Petitioner's counsel, dated February 20–26, 2024

Patent Owner respectfully requests that the Board excuse the late filing of its preliminary response ("POPR") under 37 C.F.R. §42.5(c)(3). The POPR was timely served before the deadline but, because of a temporary inability to log on to the P-TACTS system, was filed about 12 hours late. Excusing the late filing by one calendar day is supported by good cause be in the interests of justice. The Board authorized the filing of this motion on February 22, 2024. Ex. 2001 at 1. Petitioner has not stated any grounds for opposing this motion or requested relief but indicated that it would take a position after reviewing the motion. Ex. 2002 at 1.

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

On February 20, 2024, the POPR due date, Patent Owner attempted to file its POPR via P-TACTS. But Patent Owner was unable to do so because it had not previously registered its administrative staff as an authorized filer in this action using the new provisions introduced into the P-TACTS system on January 31, 2024. This issue was not discovered until the evening of February 20, 2024, at which point it was too late for Patent Owner's administrative staff to coordinate with lead counsel to correct the oversight. Specifically, at the time of filing, Patent Owner's lead counsel was temporarily unavailable and was unable to access or forward the

authentication code required to log on to the P-TACTS system. Upon realizing this issue, Patent Owner timely served Petitioner the POPR at 11:57 p.m. ET on February 20, 2024. Ex. 2002 at 4 (Service Email of POPRs in IPR2024-00153, IPR2024-00154, and IPR2024-00155). The next morning local time, Patent Owner promptly filed the POPR on the P-TACTS system. Accordingly, the POPR was timely served but filed approximately 12 hours after the deadline.

Good cause supports excusing the late filing because Patent Owner took reasonable steps to timely file its POPR, consistent with counsel and administrative staff's prior practices and procedures for timely filing POPRs. But Patent Owner failed to account for the recent change that requires an email authentication code and as a result was temporarily unable to log on to the P-TACTS system. This caused the filing to be delayed until the next morning (local time) when P-TACTS access was restored. This oversight, although regrettable, was understandable under the circumstances and does not reflect a lack of diligence.

Excusing the late filing would also be in the interests of justice. When Patent Owner realized the filing would be late, it nevertheless timely served the POPR on Petitioner by email before the deadline. Thus, there is no prejudice to Petitioner. Nor does filing the POPR one day late prevent the Board from considering it and issuing an institution decision within three months. In these circumstances, excusing the late filing and considering the POPR on the merits would be in the interests of justice.

See, e.g., *Microsoft Corp. v. Lemko Corp.*, IPR2023-00529, Paper 10 (PTAB Sept. 26, 2023) (excusing one-day late POPR filing as in the interests of justice where patent owner served petitioner before the deadline); *Samsung Electronics Co., Ltd. v. Headwater Research LLC*, IPR2023-01462, Paper 8 (PTAB Jan. 16, 2024) (excusing one-day late POPR filing as in the interests of justice where patent owner was unable to file in P-TACTS due to administrative oversight concerning power of attorney that wasn't discovered until evening of due date).

Before filing this motion, counsel for Patent Owner sent several emails to counsel for Petitioner to ask for Petitioner's position on this motion. *See* Ex. 2002 (Email Chain Regarding Motion to Excuse Late Filing in IPR2024-00153, IPR2024-00154, and IPR2024-00155). Petitioner never alleged or identified any prejudice that was caused by the late filing. Nor did Petitioner state any grounds for opposing this motion or the requested relief. Nevertheless, Petitioner stated that "Samsung will take a position after it is able to review Broadphone's as-filed motion."

Date: February 26, 2024

Respectfully submitted,

/ Reza Mirzaie /
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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e)(1))

The undersigned hereby certifies that the above document was served on February 26, 2024, by filing this document through the P-TACTS system as well as delivering a copy via electronic mail upon the following attorneys of record for the Petitioner:

Joseph E. Palys (Reg. No. 46,508)
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Date: February 26, 2024

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