

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA, INC.,
Petitioner,

v.

GRAPHITE CHARGING COMPANY, LLC,
Patent Owner.

IPR2024-00387
Patent 8,103,391 B2

Before KEN B. BARRETT, MATTHEW S. MEYERS, and
JOHN R. KENNY, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

ORDER
Granting Patent Owner's Unopposed Motion to Accept the Late Filing of
Patent Owner's Response
37 C.F.R. § 42.5

Patent Owner, with our authorization, filed a motion to accept the late filing of the Patent Owner Response and accompanying exhibits. Paper 22 (“Motion” or “Mot.”).

The scheduling order, as modified by the parties’ joint stipulations concerning due dates, authorized Patent Owner to file a response to Petitioner’s Petition, authorized Petitioner to file a reply to Patent Owner’s Response, and authorized Patent Owner to file a sur-reply. Paper 16, 9; *see also* Papers 20, 21. Patent Owner’s Response was due November 8, 2024. Paper 21, 2. According to Patent Owner, it sought to but was unable to file, on the due date, the Response and accompanying exhibits. Mot. 2–3.

“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 interest of justice.” 37 C.F.R. § 42.5(c)(3).

Patent Owner states:

Nadiia Loizides, an attorney at Devlin Law Firm who was responsible for filing the Response, experienced a complete power outage at her residence shortly before 11 P.M. EST on the filing date. Ms. Loizides contacted Leland Marcus, another associate who had been assisting her with the Response, but he was unable to finalize the filing because he was experiencing service delays with the Devlin Law Firm’s remote desktop service and SharePoint document service of a severity that rendered those services unusable. The power outage affecting Ms. Loizides’s residence lasted approximately 20 minutes and caused the finalizing and filing of the Response to be delayed. PO’s counsel informed Petitioner’s counsel by email before midnight on November 8, 2024 that it was having technical difficulties with the filing and asked whether Petitioner would oppose having the Board accept the filing as timely if filed after midnight. Ultimately, the technical difficulties faced by PO made it impossible to file the Response and Exhibits 2005 through 2007 on time.

When PO attempted to file the documents at about 12:15 A.M. EST, the P-TACTS [(Patent Trial and Appeal Case Tracking System)] system was down and prevented PO from completing the filing. After learning that the P-TACTS system was down, PO's counsel immediately served copies of the Response and Exhibits 2005 through 2007 on Petitioner's counsel at 12:27 A.M. EST on November 9, 2024, and apprised the Board via email of the situation at 1:05 A.M. EST on November 9, 2024.

Mot. 2–3 (citation omitted); *see also id.*, Exhs. A, B, C (supporting declarations of Ms. Loizides, Mr. Marcus, and Ms. Feng Xu (testifying as to the P-TACTS issue)). Patent Owner argues that, in light of the above, good cause exists to accept the late filings. Mot. 3. Patent Owner also argues that it would be in the interests of justice to accept the late filing because Petitioner has suffered no prejudice and, “[i]n contrast, PO would suffer great prejudice if its late filing is not excused because that would effectively render PO unable to present its defense.” *Id.* at 4.

Patent Owner represents that Petitioner does not oppose the motion. *Id.* at 2.

We determine that Patent Owner has shown good cause to accept the late filing and that consideration of Patent Owner's Response would be in the interest of justice, and the motion is *granted*. 37 C.F.R. § 42.5(c)(3). Patent Owner may file the Response and the accompanying exhibits. The late filing will be excused.

It is so ORDERED.

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