

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AIR PRODUCTS and CHEMICALS, INC.,
Petitioner

v.

EVONIK OPERATIONS GMBH and EVONIK CORPORATION,
Patent Owner.

Case IPR2024-00611

Patent 10,471,380 B2

**PATENT OWNER'S UNOPPOSED MOTION FOR EXTENSION OF TIME
TO FILE PRELIMINARY RESPONSE PURSUANT TO 37 C.F.R. § 42.5**

Pursuant to 37 C.F.R. § 42.5, Patent Owner submits the present Unopposed Motion for Extension of Time, requesting that the Board extend the due date for the Preliminary Response two (2) weeks—from June 7, 2024 until June 21, 2024. Petitioner does not oppose this Motion. Moreover, the Unopposed Motion is supported by a showing of good cause warranting the extension of the due date for the preliminary response. Thus, Patent Owner respectfully requests that the Board grant the Unopposed Motion.

Pursuant to 37 C.F.R. § 42.5(c)(1), the Board may modify by order any deadline that is set by rule, as long as “any applicable statutory pendency goal [is taken] into account.” In addition, the extension of time “must be supported by a showing of good cause.” 37 C.F.R. § 42.5(b)(2). Because no IPR has yet been instituted, and because Patent Owner has not yet filed or waived its preliminary response, there is no applicable statutory pendency goal. *See* 35 U.S.C. § 314(b) (requiring determination of “whether to institute an inter partes review” within three months of either the filing of a patent owner’s preliminary response or the expiration of the time for the patent owner to file a preliminary response); 35 U.S.C. § 313 (setting no statutory time limit for the filing of Patent Owner’s preliminary response); 35 U.S.C. § 316(a)(11) (requiring implementing regulations to require final determinations in inter partes reviews generally within one year of institution).

Accordingly, an extension of the due date for Patent Owner's preliminary response will have no effect on any statutory pendency goal.

Moreover, the facts and circumstances surrounding this case support a showing of good cause for extending the due date for the preliminary response. The petition in this IPR was filed on February 23, 2024. The Notice of Filing Date Accorded issued on March 7, 2024, setting the deadline for the Patent Owner to submit a preliminary response on June 7, 2024. (Paper 3.) On February 29, 2024, Petitioner requested, and Patent Owner did not oppose, leave to correct an error in the Petition.¹ The request was only granted on April 30, 2024 and the corrected Petition was filed on May 1, 2024.

In addition to the correction of the Petition, principals of Patent Owner (domiciled in Germany) have very limited availability in the month of May as a result of national holidays (e.g., Ascension Day (May 9, 2024) and Whit Monday (May 20, 2024)). The unavailability of persons directly contributing to the preliminary response provides good cause sufficient for the Board to grant this Motion. Accordingly, Patent Owner requests an additional two (2) weeks to file its

¹ In its request for leave to correct the Petition, Petitioner indicated that it would not "oppose an extension of the due date for Patent Owner's Preliminary Response corresponding to the number of days it takes to resolve this issue."

preliminary response, making the deadline June 21, 2024. Petitioner does not oppose.²

Patent Owner submits that the extension period of two (2) weeks is reasonable, and will not adversely impact the remaining schedule of the proceeding if an inter partes review is instituted.

For the foregoing reasons, the present Unopposed Motion is supported by a showing of good cause warranting the extension of the due date for the preliminary response. Accordingly, Patent Owner respectfully requests that the Board grant the Unopposed Motion.

Respectfully submitted,

Dated: May 9, 2024

By: /Philip Y. Braginsky/

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² Lead Counsel for both Patent Owner, Philip Y. Braginsky, and Petitioner, Grace Kim, conferred via telephone on Friday, May 3, 2024. Counsel for Petitioner indicated that it does not oppose this Motion.

CERTIFICATE OF SERVICE UNDER 37 C.F.R. §42.6(e)

The undersigned hereby certifies that the above document was served on April 29, 2024, by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS), as well as delivering a copy via electronic mail upon the following attorneys of record for Petitioners:

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Dated: May 9, 2024

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