

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC., AND
NXP SEMICONDUCTORS, N.V.

Petitioners,

v.

HARBOR ISLAND DYNAMIC, LLC,

Patent Owner.

Case IPR2024-01402
Patent No. 7,745,886

**PETITIONER'S OPPOSITION TO HARBOR ISLAND DYNAMIC, LLC'S
REQUEST FOR EXTENSION OF TIME TO FILE A NOTICE OF APPEAL
UNDER RULE 90.3(C)**

via PTAB P-TACTS
to Patent Trial and Appeal Board

via e-mail at efileSO@uspto.gov
to Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
United States Patent and Trademark Office
P.O. Box 1450
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I. INTRODUCTION

More than a week after its appeal deadline had lapsed, Harbor Island Dynamic, LLC (“HID”) submitted, on May 26, 2026, “Patent Owner’s Motion for Extension of Time” (“Extension Request”). On the same day, HID also submitted to this Office an untimely “Patent Owner’s Notice of Appeal”—eight days late—presuming to do so without the Director granting a retroactive extension.

Petitioners¹ oppose HID’s motion because it is insufficient to satisfy the “excusable neglect” standard required for late filings under 37 C.F.R. § 90.3.²

First, the Extension Request and its “Affidavit of Vincent Padro” (the “Affidavit”) are facially deficient, leading to more questions than answers. *See infra* § IV.A. The Supreme Court requires that the “excusable neglect” determination “tak[e] account of *all* relevant circumstances surrounding the party’s omission.” *Pioneer Inv. Serv. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380,

¹ NXP Semiconductors N.V. filed a petition and a motion for joinder in IPR2025-00954, and has been joined as a petitioner in this proceeding.

² Although 37 C.F.R. § 90.3(c) does not expressly provide for the filing of an opposition to HID’s Extension Request, the “Director has the discretion to consider such papers, and has done so in the past.” *Mitsubishi Cable Industr., Ltd. v. Goto Denshi Co.*, IPR2015-01108, Paper 28, at 10 n.4 (PTAB May 4, 2017) (Director).

395 (1993) (emphasis added). The self-serving explanations and statements provided here are so thin as to be useless. Summarily offloading all fault onto “staff members,” without more, does not provide visibility into the law firm’s oversight responsibilities, tracking processes, and docketing systems, nor whether circumstances were or were not within the movant’s “reasonable control.”

Compare id. with Extension Request, 3 (“Each staff member assumed that another staff member was responsible for calendaring the deadline, and thus the due date was not properly set in the firm’s calendaring and docketing software.”).

Second, the Federal Circuit has already made clear that a “docketing error” does not qualify as a cognizable reason for delay. *FirstHealth of the Carolinas, Inc. v. CareFirst of Maryland, Inc.*, 479 F.3d 825, 829 (Fed. Cir. 2007) (affirming finding of failure to demonstrate excusable neglect where “the reason for delay—a *docketing error*—was ‘wholly within the reasonable control of [the movant]’” (emphasis added) (citation omitted)). Thus, the only excuse proffered by HID—twice confirming that its delay was due to a “*docketing error*”—is deficient as a matter of law. *See* Extension Request, 2-3 (emphasis added); *see infra* § IV.B.

Third, federal courts consistently hold that inadequate attorney supervision of staff is within the “reasonable control” of the law firm. *E.g., U.S. v. Hooper*, 43 F.3d 26, 29 (2d Cir. 1994) (affirming that counsel’s “failure to timely file [a notice of appeal] due to the poorly supervised assistant’s ignorance of the deadline . . .

was not ‘excusable neglect’”). The attorneys in this matter had an independent obligation—but failed—to supervise paralegals and monitor their own appeal deadlines. *See infra* § IV.C (collecting cases).

Accordingly, HID’s retroactive Extension Request for filing a notice of appeal in IPR2024-01402 should be denied.

II. BACKGROUND

HID’s notice of appeal was due to be filed on May 18, 2026, based on the date of the Board’s Final Written Decision in IPR2024-01402, issued on March 16, 2026. *See Samsung Elecs Co., Ltd. et al. v. Harbord Island Dynamic, LLC*, IPR2024-01402, Paper 32 at 1, 35-38 (“Final Written Decision”) (PTAB Mar. 16, 2026). HID filed its would-be notice of appeal eight days late, on May 26, 2026.

In the mere 3-page Extension Request, HID simply blames the missed deadline on non-attorney “staff members” at Fabricant, Rubino & Lambrianakos LLP (hereinafter “Fabricant LLP”), a Westchester County law firm in New York. *See* Extension Request, 3-4. According to HID:

Patent Owner’s notice of appeal was late due to a docketing error in which staff members neglected to calendar the deadline. Each staff member assumed that another staff member was responsible for calendaring the deadline, and thus the due date was not properly set in the firm’s calendaring and docketing software.

Id. at 3 (citing “Declaration of Victor M. Padro at 1” [sic]).³ The Affidavit attached is as sparse as the Extension Request—one page with four-numbered statements:

I, Victor M. Padro, hereby declare and state as follows:

1. I am a senior IP Litigation Paralegal at the firm of Fabricant, Lambrianakos & Rubino LLP. As part of my duties, I am assigned to supervise docketing for Inter Partes Review No. 2024-01402.
2. On March 16, 2026, I and my subordinates received the Final Written Decision in this matter. I and my subordinates understood that the deadline was 63 days from receiving the Final Written Decision.
3. Due to a miscommunication, I did not instruct any of my subordinates to calendar the date. I assumed one of my subordinates had done so; my subordinates believed that I or another staff member had calendared the date.
4. Neither I nor my subordinates discovered this omission until May 26, 2026, after an inquiry from the attorneys on the case.

Affidavit, 1.

The Extension Request makes three notable admissions regarding the lack of timely oversight from the supervising attorneys at Fabricant LLP: (1) “Patent Owner’s counsel *did not realize the deadline was impending or passed* until May 26, while examining the status of various cases,” (2) “Counsel for *co-Petitioner*

³ While the Extension Request identifies a “Declaration of Victor M. Padro,” the document likely referenced is actually entitled “Affidavit of Victor Padro.”

Petitioners assume these are the same for purposes of this paper.

also informed Patent Owner counsel that the notice of appeal deadline had passed,” and (3) “Patent Owner filed this *motion as soon as it discovered the deadline has passed*,” ostensibly May 26, 2026. Extension Request, 3-4 & note 1 (emphases added); *see also* Affidavit, ¶ 4.

In fact, reading below the line, it is admitted that “[c]ounsel for *co-Petitioner*” had to inform the Fabricant LLP lawyers “that the notice of appeal deadline had passed.” Extension Request, 3 note 1. It is evident on the face of the Extension Request and Affidavit that whatever process or interval HID’s counsel relied on for “examining the status of various cases,” was inadequate to timely identify all “impending” statutory deadlines 63 days out. *See* Extension Request, 3; Affidavit, ¶ 4.

III. LEGAL STANDARDS

“[I]n determining excusable neglect, the USPTO applies the standard used by the Federal Courts.” *In re Robertson*, App. No. 11/359,581, Decision on Request Under 37 C.F.R. § 90.3(c)(1)(ii) at 3 (Mar. 11, 2015) (citing MPEP § 1216). The “excusable neglect” inquiry is an

equitable one, taking account of all relevant circumstances surrounding the party’s omission. These include . . . [1] the danger of prejudice to [another party], [2] the length of the delay and its potential impact on judicial proceedings, [3]

the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

Id. (quoting *Pioneer*, 507 U.S. at 395). “[I]nadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute ‘excusable neglect.’” *Id.* (quoting *Pioneer*, 507 U.S. at 392 (citations omitted)). The third *Pioneer* factor—relating to why the filing was delayed—is widely considered the most important factor. *See, e.g., id.; FirstHealth*, 479 F.3d at 829; *Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582, 1586 n.7 (TTAB 1997).

The Federal Circuit has confirmed that a “docketing error” does not qualify for weight under the third factor in the excusable neglect analysis. *FirstHealth*, 479 F.3d at 829 (citing *Pumpkin*, 43 USPQ2d at 1587); *accord In re Robertson, supra* 4-5 (warning that the “sole reason given here for missing the original filing deadline” was “a law firm clerical error,” which “is generally considered to be ‘wholly within the reasonable control’ of the movant, which, in turn, is generally not understood to be ‘excusable neglect’”) (citations omitted). “[S]loppy practice or inattention to deadlines” is also relevant to the second *Pioneer* factor. *See FirstHealth*, 479 F.3d at 829 (quoting *Pumpkin*, 43 USPQ2d at 1588).

Furthermore, federal courts consistently hold that inadequate attorney supervision of non-lawyer employees with respect to deadlines is within the

attorney's "reasonable control" and does not constitute excusable neglect. *See, e.g., In re DeMarco*, 733 F.3d 457, 463 (2d Cir. 2013) ("[A]ttorneys have their own due diligence responsibility [to track deadlines] and cannot rely on perfect processing by . . . law firm employees."); *In re Lang*, 305 B.R. 905, n.27 (10th Cir. BAP 2004) (collecting cases, including, *inter alia*, *Schmidt v. Boggs*, 246 B.R. 265, 268 (6th Cir. BAP 2000) ("Where counsel have attempted to convince courts that deadlines missed through mistakes made by office staff . . . were the result of excusable neglect, they have been soundly rebuffed." (citation omitted)) and *In re Snow*, 23 B.R. 655, 657 (Bankr. E.D. Cal. 1982) ("The mere difficulty with office help, inadvertence, and the press of other matters are insufficient to constitute excusable neglect.")).⁴

⁴ The USPTO likewise has well-defined professional conduct responsibilities for "partners, managers, and supervisory practitioners" vis-à-vis "non-practitioner assistance" at 37 C.F.R. §§ 11.501-.503 (establishing that an attorney who delegates deadline-tracking to a paralegal or legal assistant without adequate supervision, and who fails to take remedial action when the consequences of the non-lawyer's error can still be avoided, is in violation of 37 C.F.R. § 11.503).

IV. ARGUMENT

A. The HID Extension Request Lacks the Necessary Specificity

The cursory Extension Request and Affidavit are so deficient as to make it impossible to “take account of all relevant circumstances surrounding the party’s omission.” *Pioneer*, 507 U.S. at 395. HID does not explain enough to decide that there is “excusable neglect” in this case for failing to timely file.

HID’s explanation is that “Patent Owner’s notice of appeal was late due to a docketing error in which staff members neglected to calendar the deadline.” Extension Request, 2. But this rationalization leaves large gaps in understanding Fabricant LLP’s calendaring protocols and supervisory responsibilities. HID provided no statement or contemporaneous evidence of communications from the relevant timeframe to show, for example, how the supervising attorneys set up their docketing notifications, electronic or otherwise, and whether there had been similar lapses in the past; how the paralegals and staff typically communicated deadlines between themselves and with attorneys; how deadlines and next steps are discussed and approved with the client or ultimate decision-maker; how and when draft notices of appeal are generated and by whom in advance of filing; and how and when the lead counsel and other attorneys at Fabricant LLP actually discovered their missed appeal deadline and whether it could have been corrected sooner. This missing information would better convey to the Director “*all* relevant

circumstances.” *Pioneer*, 507 U.S. at 397 (emphasis added). Yet the Extension Request chooses to ignore such details and HID is “held accountable for the acts and omissions of their chosen counsel.” *Id.*

The inability or unwillingness to even provide a detailed and “satisfactory explanation” for its failure to file a timely notice of appeal militates against finding excusable neglect. *See Graphic Commc’ns Int’l Union, Local 12-N v. Quebecor Printing Providence, Inc.*, 270 F.3d 1, 5-6 (1st Cir. 2001) (holding that there “must be a satisfactory explanation for the late filing” and affirming district court finding of no “excusable neglect” under *Pioneer*).

B. HID’s “Docketing Error” Justification Fails as Excusable Neglect

The only justification for delay that HID provides, twice, is that “Patent Owner’s notice of appeal was late due to a *docketing error* in which staff members neglected to calendar the deadline.” *See* Extension Request, 3-4 (emphasis added). But the Federal Circuit has confirmed that a “docketing error” *does not* qualify for weight in the excusable-neglect analysis.

Similar to here, *FirstHealth* dealt with a “docketing error made by a new paralegal.” 479 F.3d at 827. The Federal Circuit still affirmed the TTAB’s decision that movant “failed to demonstrate excusable neglect.” *Id.* Because the Federal Circuit deemed that “the third factor—the reason for the delay and whether it was within the movant’s control—to be of paramount importance,” it scrutinized

closely this very question. *Id.* at 829. The Court determined, like the Board, that “the reason for delay—a docketing error—was ‘wholly within the reasonable control of [the movant].’” *Id.* at 829 (emphasis added) (citation omitted); *accord In re Robertson, supra* at 4-5 (noting that it is problematic if Petitioner’s excusable-neglect argument is exclusively “a law firm clerical error”). HID’s “sole reason given here for missing the original filing deadline,” *id.*, is also just a clerical, “docketing error” made by staff members. *See* Extension Request, 2-4. That is not enough under the relevant law.

HID relies on the inapposite *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 25 F. App’x 923, 924 (Fed. Cir, 2001), a case dealing with a simple typographical error of one digit—claim “8” as opposed to claim “9”—in the timely first notice of appeal, and permitting an extension to correct it a second notice of appeal. Extension Request, 3 (“Amgen filed a motion in the district court for an extension of time to file a second notice of appeal to include claim 9, which the district court granted. . . .”). *Amgen* is unsurprisingly benign in its treatment of the reasonable request under review there, but that is irrelevant to the very different context of this case—it beggars belief that HID claims “[t]his case is no different.” *Id.*

HID’s alleged “docketing error,” i.e., “the due date was not properly set in the firm’s calendaring and docketing software,” *id.*, is not cognizable under the relevant caselaw and does not amount to “intervening circumstances beyond the

party's control.” *Pioneer Inv.*, 507 U.S. at 388. Accordingly, the third factor, which predominates in the analysis, weighs heavily against finding excusable neglect.

C. The Lack of Attorney Supervision and Docket Monitoring

Courts routinely hold that the excusable neglect standard is unmet when attorneys delegate deadline-tracking to paralegals, legal assistants, or other non-lawyer staff without adequate supervision. “[F]ailure to timely file due to the poorly supervised assistant’s ignorance of the deadline . . . was not ‘excusable neglect.’” *Hooper*, 43 F.3d at 29; *see Schmidt*, 246 B.R. at 268 (“‘Where counsel have attempted to convince courts that deadlines missed through mistakes made by office staff . . . were the result of excusable neglect, they have been soundly rebuffed.’”) (citation omitted). Add to this the imperative of independent-attorney monitoring, which did not happen “frequently” enough for the docket here. *See In re DeMarco*, 733 F.3d at 463 (“[A]n attorney exercising due diligence would monitor the docket quite frequently [A]ttorneys have their own due diligence responsibility [to track deadlines] and cannot rely on perfect processing by . . . law firm employees.”).⁵ The Fabricant LLP attorneys thus bore a non-delegable duty

⁵ As was recently rearticulated, the requirement of proper staff supervision and independent attorney oversight over dockets is particularly pronounced in the Second Circuit and the Southern District of New York, where Fabricant LLP is

over their own dockets, *see id.*, and cannot credibly claim that miscommunications about filing deadlines among staff are beyond their “reasonable control.” *See Pioneer*, 507 U.S. at 395.

At bottom, despite trying to shift the blame entirely onto a paralegal, the Extension Request is tellingly vague about the “buck-stops-here” duty of all the firm lawyers involved. *See generally* Extension Request, 2-4; Affidavit ¶¶ 1-4. Nevertheless, various statements in HID’s papers expose the lack of staff supervision and self-monitoring of attorney dockets. *See, e.g.*, Extension Request, 3 (“Patent Owner’s counsel *did not realize the deadline was impending* or passed until May 26, while examining the status of various cases.”) (emphasis added), 4 (“Patent Owner filed this motion as soon as it discovered the deadline has

situated. *See Picard v. HSBC Bank Plc*, No. 25 Civ. 9378 (DEH), 2026 WL 697014 at 1-2 (S.D.N.Y. 2026) (holding that “[c]alendar[ing] errors rarely, if ever, satisfy the excusable neglect standard” in the Second Circuit, and parenthetically noting cases holding that it is the attorney’s—not the staff’s—ultimate responsibility to track deadlines); *see also In re Burton*, 316 B.R. 138, 141 (S.D.N.Y. 2004) (holding party’s “*experience* as an attorney and litigant weigh *against* finding that his failure to perfect his appeal was the product of excusable neglect”) (emphasis added).

passed.”); Affidavit, ¶ 4 (“Neither I nor my subordinates discovered this omission until May 26, 2026, after an inquiry from the attorneys on the case.”). Regardless of the inaction of paralegals and staff, these statements candidly confirm that the supervising-attorney types over this matter were not monitoring their dockets properly. *In re DeMarco*, 733 F.3d at 463-64 (“DeMarco’s failure to properly monitor the dockets . . . constituted a lack of due diligence on his part, whether or not anyone else also had any such responsibility.”).

There can thus be no excusable neglect on these facts, which speak directly to circumstances within Fabricant LLP’s “reasonable control” under the third factor; these facts also go to the second *Pioneer* factor—“length of the delay and *its potential impact on judicial proceedings*.” *See Pioneer*, 507 U.S. at 395 (emphasis added). HID blithely declares that “there is no conceivable prejudice . . . based on an eight-day delay.” Extension Request, 4. But the general “impact on judicial proceedings” factor may also consider institutional implications, for example the USPTO’s “interest in deterring delay *due to sloppy practice or inattention* to deadlines,” which is “relevant to the second *Pioneer* factor and also weighs heavily against a finding of excusable neglect.” *See FirstHealth*, 479 F.3d at 829 (affirming extension denial where “second and third factors weigh against excusable neglect”) (emphasis added) (internal quotations omitted).

V. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the HID Extension Request be denied; that the untimely notice of appeal that HID filed with the Director be stricken; and that the Federal Circuit be notified regarding the improper appeal now docketed as No. 2026-1886 (Fed. Cir. June 1, 2026).

Respectfully submitted,

Dated: June 5, 2026

By: / Joshua L. Goldberg /
Joshua L. Goldberg, Lead Counsel
Reg. No. 59,369

CERTIFICATE OF FILING

I hereby certify that, in addition to being filed electronically through the Patent Trial and Appeal Board's P-TACTS system, a true and correct copy of the above-captioned **PETITIONER'S OPPOSITION TO HARBOR ISLAND DYNAMIC, LLC'S REQUEST FOR EXTENSION OF TIME TO FILE A NOTICE OF APPEAL UNDER RULE 90.3(C)** is also being filed by electronic mail, pursuant to 37 C.F.R. § 90.3(c)(2), with the Director of the United States Patent and Trademark Office, on June 5, 2026, at the following e-mail address: **efileSO@uspto.gov**

Dated: June 5, 2026

By: / Joshua L. Goldberg /
Joshua L. Goldberg, Lead Counsel
Reg. No. 59,369

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Petitioner's Opposition to Harbor Island Dynamic, LLC's Request for Extension of Time to File a Notice of Appeal Under Rule 90.3(C)** was served on June 5, 2026, via email directed to counsel of record for Patent Owner at the following:

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