

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR

In re Andrew Ian Douglass)	
Application Serial No. 09/527,507)	Decision on Request
Filed: March 16, 2000)	under 37 C.F.R. § 90.3(c)(1)(ii)
_____)	

MEMORANDUM AND ORDER

On November 7, 2008, patent applicant Andrew Ian Douglass (Douglass) filed a Request seeking an extension of time under 37 C.F.R. § 90.3(c)(1)(ii)¹ to file a Notice of Appeal in application serial number 09/527,507. The Board decision here issued on May 10, 2013. On July 8, 2013, Douglass filed a timely Complaint in the United States District Court for the Eastern District of Virginia under 35 U.S.C. § 145 seeking review of the Board decision. However, Douglass explains in his Request that he subsequently determined that an appeal to the U.S. Court of Appeals for the Federal Circuit would be more appropriate. On September 26, 2013, the district court remanded the application back to the USPTO to permit Douglass to seek additional time to pursue such an appeal. On October 24, 2013, Douglass filed the underlying Request seeking additional time in which to file such an appeal and dismiss his pending action.

The Director may extend the time for civil action or appeal “after the expiration of the period for filing an appeal or commencing a civil action, and upon a showing that the failure to act was the result of excusable neglect.” 37 C.F.R. § 90.3(c)(1)(ii). The facts above are

¹ Douglass filed the his request under 1.304(a)(3)(ii). However, on September 16, 2012, various changes to Title 37 of the Code of Federal Regulations took effect. These included replacing the previous regulations governing the seeking of judicial review of Board decisions at 37 C.F.R. §§ 1.301-304, with the provisions at 37 C.F.R. §§ 90.1-90.3. Since the Board decision here was issued after the September 16, 2012 effective date of the new rules, they govern this request. Substantively, however, the new and old rules are equal.

sufficient to grant the requested time extension. Douglass should dismiss his civil action before filing an appeal notice to the Federal Circuit.

ORDER

Upon consideration of the Request for an extension of time under 37 C.F.R. § 90.3(c)(1)(ii), it is ORDERED that the Request is granted.

Douglass' time for seeking judicial review under 37 C.F.R. § 90.3(a)(1) is extended to November 29, 2013.

Dated: October 30, 2013



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