

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE DIRECTOR

In re Noes )  
U.S. Application No. 11/585,738 ) Decision on Request  
under 37 C.F.R. § 90.3(c)(1)(i)  
\_\_\_\_\_)

**MEMORANDUM AND ORDER**

On October 30, 2014, Applicant Bradley William Noes (Noes) filed a Request seeking an extension of time under 37 C.F.R. § 90.3(c)(1)(i) to pursue an appeal to the United States Court of Appeals for the Federal Circuit under 35 U.S.C. § 141, or commence a civil action under 35 U.S.C. § 145, for review of the Patent Trial and Appeal Board (Board) decision in U.S. Application No. 11/585,738 (the '738 application).

Noes explains that he was represented during both prosecution and his Board appeal by Mr. John B. Woodward. In October 2012—after Board briefing had been completed and Noes was awaiting a decision from the Board—Mr. Woodward passed away. Noes states that he was not immediately aware of Mr. Woodward's passing; once informed, he engaged Mr. P. Andrew Blatt to represent him, filing a Power of Attorney to that effect in the '738 application in April 2013. Mr. Blatt was not authorized to substantively evaluate the application or patentability at that time. Mr. Blatt informed Noes both of the Board decision when it issued on August 28, 2014, and of Noes' possible procedural options moving forward. Noes states that he did not inform Mr. Blatt of his desire to appeal the Board decision until late October. Thus, Noes requests an additional 45 days in which to pursue judicial review to permit his attorney, Mr. Blatt, sufficient time to review the file history and then advise him as to the proper course of action.

The Board decision here issued on August 28, 2014. Per 37 C.F.R. §§ 90.3(a)(1) & (3)(i), a notice of appeal to the Federal Circuit under 35 U.S.C. § 141, or complaint under 35

U.S.C. § 145, was due on or before October 30, 2014 (*i.e.*, sixty-three (63) days from the date of the final Board decision). This Request for additional time was filed on October 30, 2014, making it subject to the “good cause” standard of 37 C.F.R. § 90.3(c)(1)(i). Under 37 C.F.R. § 90.3(c)(1)(i), the Director may extend the time for pursuing judicial review if requested in writing “before the expiration of the period for filing an appeal or commencing a civil action, and upon a showing of good cause.”<sup>1</sup> The facts above are sufficient to show good cause to grant the requested time extension.

With regard to the length of time for the extension, Noes has already received the benefit of 40 additional days in which to evaluate his review options, the result of the delay in issuing this Decision. That delay was, in turn, the result of the premature Notice of Abandonment issued by the Examiner on November 3, 2014, who was unaware that Noes had filed the underlying extension request. The Notice was withdrawn on December 5, 2014. Given those circumstances, an additional 20 days from the date of this Decision (for a total extension of 61 days) is sufficient for Noes to determine how to proceed.

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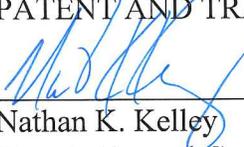
<sup>1</sup> Decisions on requests for additional time to seek judicial review of Board decisions are delegated to the Solicitor. MPEP § 1002.02(k)(3).

ORDER

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

Noes' time for seeking judicial review of the Board decision in the '738 application is extended sixty-one (61) days from October 30, 2014, to December 30, 2014.

MICHELLE K. LEE  
DEPUTY UNDERSECRETARY OF COMMERCE  
FOR INTELLECTUAL PROPERTY AND  
DEPUTY DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE

By:   
Nathan K. Kelley  
Deputy General Counsel for  
Intellectual Property Law and Solicitor

DATE: December 10, 2014

cc:

P. Andrew Blatt  
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