

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE DIRECTOR

In re Application of Jie Bai et al. )  
Application No. 13/027,747 )  
Decision on Request  
under 37 C.F.R. § 90.3(c)(1)(i)

**MEMORANDUM AND ORDER**

On October 13, 2016, applicants Jie Bai et al. (Bai) filed a Request seeking an extension of time on their deadline to pursue an appeal to the United States Court of Appeals for the Federal Circuit under 35 U.S.C. § 141. The Patent Trial and Appeal Board (Board) in Application No. 13/027,747 (the '747 application) issued a decision on Bai's request for rehearing on September 8, 2016. Under Rule 90, an appeal notice in the '747 application is due on or before November 10, 2016. Thus, this Request falls under 37 C.F.R. § 90.3(c)(1)(i), which permits the Director to 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>

Bai represents that an extension is needed to permit the Board to entertain their "Second Request for Rehearing Pursuant to 37 C.F.R. § 41.52" and related "Petition for Waiver of the Rules Pursuant to 37 C.F.R. § 41.3 and Request for Expanded Panel," both also filed on October 13, 2016. The Director finds that the Request meets the "good cause" standard, as the time will permit the USPTO to address Bai's filings, which may moot the need for judicial review. *See* Req. at 2.

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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

Bai's Request under Rule 90.3(c)(1)(i) is granted. Bai's deadline for filing a Notice of Appeal to the United States Court of Appeals for the Federal Circuit on the Board's September 8, 2016 Rehearing Decision—currently due November 10, 2016—is extended to the date on which the USPTO decides Bai's "Petition for Waiver of the Rules Pursuant to 37 C.F.R. § 41.3 and Request for Expanded Panel," filed October 13, 2016.

If the Petition is denied, Bai is granted an additional 63 days from the date of that decision in which to file its Notice of Appeal to the Federal Circuit in the '747 application.

If the Petition is granted, any additional time to seek appellate review is unnecessary; Bai will have 63 days from the Board's decision on Bai's Second Request for Rehearing to file any Notice of Appeal with the Federal Circuit.

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



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

*November 1*  
DATE: ~~October~~ \_\_, 2016

cc: William F. Smith  
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