

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR**

In re Bhagat,

Applicant

Decision on Request for Extension
of Time under 37 C.F.R. § 90.3(c)(i)

Appl. Ser. No. 13/877,847

MEMORANDUM AND ORDER

On April 10, 2020, Applicant Urvashi Bhagat (“Applicant”) filed a request to extend the time to seek judicial review of the Patent Trial and Appeal Board (“Board”) decision in the underlying application here by a period of sixty (63) days. The Board decision affirming the unpatentability of all pending claims in the underlying application issued on February 20, 2020. 37 C.F.R. § 90.3(a) provides that judicial review of a Board decision must be sought within sixty-three (63) days of the Board decision. Here, Applicant’s deadline to seek judicial review of the Board decision is April 23, 2020.

Accordingly, the extension request here—filed in writing before the expiration of the period for filing the appeal notice—falls under the “good cause” provision of 37 C.F.R. § 90.3(c)(i). Under 37 C.F.R. § 90.3(c)(i), the Director may, for good cause, extend the time to seek judicial review of a Board decision. The request is GRANTED for the reasons set forth below.

Applicant states that she has

been personally affected by the COVID-19 outbreak, including, without limitation, through office closures, cash flow interruptions, inaccessibility of files or other materials, such that the outbreak has materially interfered with timely filing and payment of fees for appeal or civil action.

Req. at 6. The Director finds that the stated direct impact of the COVID-19 outbreak on Applicant's ability to pursue judicial review in the underlying application here provides good cause for the requested extension.

Applicant requests that the additional 63 days on her appeal-notice window begin running from the decision on a petition seeking review of alleged errors in the February 20, 2020 Board Decision, filed with the Chief Judge of the Board under 37 C.F.R. §§ 41.3 and 1.181 on March 5, 2020. *See* Req. at 1 (arguing that waiting for a decision from the Chief Judge provides additional good cause for the requested extension). Applicant's Rule 41.3 petition was denied on April 14, 2020.

Further, while denying the requested substantive relief, the Rule 41.3 Decision granted Applicant an additional two months on her window in which to file a request for rehearing of the February 20, 2020 Board decision with the Board under 37 C.F.R. § 41.52(a)(1). *See* Rule 41.3 Dec. at 12 (granting two months from April 14, 2020 to file request for rehearing under 37 C.F.R. § 41.52(a)). If Applicant pursues a timely Rule 41.52 request for rehearing with the Board, that filing will reset the time for appeal in this matter; a new 63-day window for seeking judicial

review will run from action on the rehearing request and moot the extension granted herein. *See* 37 C.F.R. § 41.52(b). Thus, Applicant essentially has two options: seek judicial review of the February 20, 2020 Board decision by June 25, 2020 (i.e., 63 days from the original April 23, 2020 Rule 90 filing deadline), or file a request for rehearing of the February 20, 2020 Board decision with the Board within two months of April 14, 2020, as provided by the Rule 41.3 Decision.

The Rule 90 request for extension of time is GRANTED. Applicant's deadline for seeking judicial review of the February 20, 2020 Board decision in the underlying application is extended for sixty-three (63) days, from April 23, 2020, to June 25, 2020.

ANDREI IANCU,
*Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent
and Trademark Office*

Date: April 23, 2020

By: /s/Thomas W. Krause
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