

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR

KHS USA Inc. v. Steuben Foods, Inc.) Decision on Request
Reexamination Control No. 95/001,452) under 37 C.F.R. § 1.304(a)(3)(i) (2012)
_____)

MEMORANDUM AND ORDER

On October 5, 2017, patent owner Steuben Foods, Inc. (Steuben) filed a request under 37 C.F.R. § 1.304 (2012), seeking an extension of time on the window for pursuing appeal to the United States Court of Appeals for the Federal Circuit for review of the Patent Trial and Appeal Board (Board) decisions in inter partes reexamination control no. 95/001,452. The Board issued its initial decision on March 25, 2016, and Steuben sought rehearing on April 25, 2016. On September 13, 2016, the Board granted the rehearing request to the extent it designated certain grounds of affirmance as “new grounds of rejection.” On November 14, 2016, Steuben filed a request to reopen prosecution pursuant to 37 C.F.R. § 41.77(b)(1). On September 19, 2017, the Board denied Steuben’s request and made final its rehearing decision.

Under 37 C.F.R. § 1.304 (2012), an appeal notice is due on or before November 20, 2017 (the due date is actually November 19, 2017, which is a Sunday). Accordingly, this request falls under 37 C.F.R. § 1.304(a)(3)(i), which permits the Director¹ to extend the time for pursuing judicial review “[f]or good cause shown if

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


requested in writing before the expiration of the period for filing an appeal or commencing a civil action.” Steuben explains that it filed a Petition under 37 C.F.R. § 41.3 with the Chief Administrative Patent Judge on October 3, 2017, seeking the reopening of prosecution; the disposition of Steuben’s Petition could impact any appeal here, including mooted the need for an appeal at this time. Steuben requests the additional time on its appeal deadline here to permit its Petition under Rule 41.3 to be considered. The Director finds good cause exists to grant the requested extension to permit the USPTO time to decide Steuben’s Rule 41.3 Petition.

ORDER

Upon consideration of the Request, it is ORDERED that the Request is granted.

Steuben's deadline for filing a Notice of Appeal to the United States Court of Appeals for the Federal Circuit in inter partes reexamination control no. 95/001,452 (to the extent necessary) is extended from November 19, 2017, to the date that is sixty-three (63) days from the date of a final decision on Steuben's Rule 41.3 Petition (filed on October 3, 2017).

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


By: Nathan K. Kelley
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DATE: November 15, 2017

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