

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR

Coldharbour Marine Ltd. v.)
MH Systems, Inc.) Decision on Request
) under 37 C.F.R. § 90.3(c)(1)(i)
Reexamination Control No. 95/001,559)
U.S. Patent RE 41,859)
_____)

MEMORANDUM AND ORDER

On December 14, 2015, Patent Owner MH Systems, Inc. (through Mr. Mo Husain, co-inventor of the subject '859 patent and President of MH Systems, Inc.), 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 for review of the Patent Trial and Appeal Board (Board) decision in *Inter Partes* Reexamination Control No. 95/001,559 (the '559 reexamination). The Board decision was issued on May 21, 2015. A six-month extension on the appeal filing deadline for this matter under the “good cause” standard of 37 C.F.R. § 90.3(c)(1)(i) was previously granted on July 16, 2015. *See* Order Granting Additional Time (dated Jul. 16, 2015). Pursuant to that time extension, the current filing deadline is January 23, 2016. Thus, this second request is also 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.”¹

Mr. Husain explains that he continues to experience “recurring and significant health issues,” including two prior open heart surgeries. Mr. Husain asserts that “as a non[-]attorney,”

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

and in light of his “recurring heart health issues” and his age (82), another six months is needed to “prepare for an appeal” to the Federal Circuit. The Director is sympathetic to Mr. Husain’s situation; the six-month extension granted in July, 2015, predicated on Mr. Husain’s health issues, was the longest granted in recent memory. But there are limits to how much additional time can be granted, even under the “good cause” standard. The USPTO is statutorily obligated to complete *inter partes* reexamination proceedings like this one with “special dispatch.” See 35 U.S.C. § 314(c) (pre-AIA). Granting another six-month extension would reset the appeal notice filing deadline date to July 23, 2016, which means that more than a year would have passed since the May 21, 2015 Board decision date without any affirmative action to reach final resolution of the matter. Further, this reexamination actively involves a third party (Requester Coldharbour Marine Limited), whose interest in final resolution of this matter must also be considered.

On balance, then, the proffered explanation does not constitute “good cause” sufficient to justify the requested additional six months. Mindful of the issues raised by the Request, however, the Director will grant an additional 30 days from the current January 23, 2016 deadline, to February 22, 2016. This will permit MH Systems and Mr. Husain to decide how to proceed (including to determine whether legal counsel must be hired to handle the appeal, and engage such counsel).² Additionally, the Director hastens to point out that only the notice of appeal is due on February 22, 2016; any brief would not be due until after the appeal is docketed by the

² The Director observes that “MH Systems, Inc. is the Patent Owner and the real party in interest” of the subject ’859 patent. Board Dec. at 1 (citing Patent Owner Appeal Br. at 1). While the proper interpretation and enforcement of Federal Circuit Rules is properly left to the Court itself, Federal Circuit Rule 47.3(a) indicates that corporations cannot proceed *pro se* in an appeal, but must be represented by an attorney. See also *Guide for Pro Se Petitioners and Appellants* § 1 (“Corporations and associations cannot proceed *pro se* and must be represented by counsel.”) available at <http://www.cafc.uscourts.gov/sites/default/files/Pro%20Se%20Guide.pdf>.


Federal Circuit and subject to the applicable rules regarding brief due dates.

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.

Mr. Husain's time for seeking judicial review of the Board decision in the '559 reexamination is extended thirty (30) days, from January 23, 2016, to February 22, 2016.

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

By: 
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Acting Deputy General Counsel for
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DATE: January 11, 2016

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