

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

Gilbert P. Hyatt

Applicant

Decision on Request for Extension of
Time under 37 C.F.R. § 90.3(c)(1)(i)

Appl. Ser. Nos. 08/472,019, 08/426,361,
08/431,638, 08/434,449

MEMORANDUM AND ORDER

On November 7, 2023, Applicant Gilbert P. Hyatt. (“Applicant”) filed “Requests for Extension of Time” (“Requests”) to extend the time to seek judicial review of the Patent Trial and Appeal Board (“Board”) decisions in Application Serial Numbers 08/472,019, 08/426,361, 08/431,638, and 08/434,449. A table of the relevant information for each application number is listed below.

Application Serial No.	Date of Board Decision	Due date for appeal	Date for which an appeal extension is sought
08/472,019	September 14, 2023	November 16, 2023	December 22, 2023
08/426,361	October 11, 2023	December 13, 2023	January 19, 2024
08/431,638	October 13, 2023	December 15, 2023	January 5, 2024
08/434,449	November 1, 2023	January 3, 2024	January 12, 2024

The Requests here—filed in writing before the expiration of the period for filing any of the appeal notices—fall under the “good cause” provision of 37 C.F.R. § 90.3(c)(1)(i). Under 37 C.F.R. § 90.3(c)(1)(i), the Office may, for good cause, extend the time to seek judicial review of a Board decision. Upon consideration of the

Requests for extensions of time under 37 C.F.R. § 90.3(c)(1)(i), it is ORDERED that the Requests are GRANTED for the reasons set forth below.

Applicant has good cause for an extension of time for each of the underlying applications. Applicant anticipates filing a Section 145 action for each of the applications and he has a conflict between each application's due date for appeal¹ and conflicts arising from the prosecution laches remand trial ("trial"), which took place between September 18 and October 5, 2023. *See* Req. at 2. Applicant asserts that preparation of each Section 145 complaint "requires the substantial personal participation" of Applicant but that Applicant "was unable to devote sufficient attention to these matters or to certain previously extended Section 145 actions [] during the trial, at which Mr. Hyatt was a key witness." *Id.* Applicant further explains that he and his attorneys have significant additional post-trial duties such that they are unable to devote time to the preparation of each Section 145 complaint. *Id.* Lastly, Applicant explains that the extension accounts for the absence of Applicant's attorneys during December 2023 and January 2024. *Id.* at 2-3. The Office agrees that these reasons provide good cause for the extension Requests.

In his Requests, Applicant explains that the USPTO approved extensions for seven other Section 145 actions, extending the due dates for those complaints to dates during the periods of October 27 to November 17, 2023, and December 1-15, 2023.

¹ 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.

Id. at 2. He asserts that such an extension here will “avoid[] conflict with necessary work to meet [those] previously extended due dates [] on account of the remand trial.”

Id. This reasoning is too broad. The USPTO’s approval of prior requests for extensions does not justify granting these latest requests for extensions. The Office evaluates each extension request based on the facts and circumstances presented in the request. For example, in the previous extension request, the Applicant was unavailable because he was in trial. That fact alone weighed heavily on the Office’s decision to grant the requested extension. That trial is now concluded. Thus, while the Office agrees that the facts and circumstances set forth in the present Requests demonstrate good cause for the extension, this does not guarantee that any future request will be granted, even if the deadline for filing the § 145 complaint falls within the current extension period.

ORDER

Upon consideration of the Requests, it is ORDERED that the Requests are **granted**. Applicant’s deadline to file a Section 145 action for each of the underlying applications is extended in accordance with the chart below.

Serial No.	Date for which an appeal extension is GRANTED
08/472,019	December 22, 2023
08/426,361	January 19, 2024
08/431,638	January 5, 2024
08/434,449	January 12, 2024

KATHERINE K. VIDAL
Under Secretary of Commerce for
Intellectual Property and Director of the
U.S. Patent and Trademark Office

/s/ Farheena Y. Rasheed
By: Farheena Y. Rasheed
Acting Solicitor

DATE: November 14, 2023

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