

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR

Unified Patents Inc.)	
Petitioner)	IPR2018-00599
)	
v.)	
)	
Sound View Innovations, LLC)	
Patent Owner)	
_____)	
Hulu, LLC)	
Petitioner)	IPR2018-00864
)	
v.)	
)	
Sound View Innovations, LLC)	Decision on Request
Patent Owner)	under 37 C.F.R. § 90.3(c)(1)(i)
_____)	

MEMORANDUM AND ORDER

On November 8, 2019, Patent Owner Sound View Innovations, LLC (“Sound View”) filed a “Request For Extension Of Time For Filing Appeal” (“Request”), seeking a thirty-day extension of time in IPR2018-00599 and IPR2018-00864, in which to file a notice of appeal to the Federal Circuit. *See* Req. at 1. The Patent Trial and Appeal Board (“Board”) issued its Final Written Decision in both proceedings on September 9, 2019. Per 37 C.F.R. § 90.3(a)(1), a Notice of Appeal to the Federal Circuit is due on or before November 12, 2019.¹ Because this Request was filed

¹ The 63-day deadline is actually November 11, 2019, which is a federal holiday, making the due date November 12, 2019.

before the expiration of the period for seeking judicial review, this Request falls under the “good cause” standard.

Sound View provides two reasons that it needs an extra thirty days to file a notice of appeal in these two proceedings, both based on the recent decision in *Arthrex, Inc. v. Smith & Nephew, Inc.*, No. 2018-2140, 2019 WL 5616010 (Fed. Cir. Oct. 31, 2019). First, Sound View explains that on November 8, 2019, it requested a telephonic hearing with the Board to seek permission to file an out-of-time request for rehearing in light of *Arthrex* in the two IPR proceedings. Sound View asks for the additional time to permit the Board to consider its filing request and, if rehearing requests are permitted, to decide the rehearing requests. *See* Req. at 3. Second, Sound View asserts it needs the extensions more broadly to “provide sufficient time for Sound View to consider the best course of action in light of *Arthrex* and its progeny, and of the rules and policies of the Office.” *Id.*

Neither basis provides adequate reason to grant an additional 30 days on Sound View’s appeal filing deadline in these proceedings. On November 12, 2019, the Board declined Sound View’s request for a conference call and did not authorize Sound View to file untimely requests for rehearing. Thus, no additional time on Sound View’s appeal notice deadline is needed to permit the Board to resolve Sound View’s request for rehearing in either proceeding.

On Sound View’s second reason, no objectively reasonable basis has been

identified why Sound View needs additional time to consider the “best course of action in light of *Arthrex* and its progeny.” While the Director appreciates that *Arthrex* addresses important issues, Sound View has not identified anything particularly unique about it—generally or as applied to Sound View—that justifies an additional 30 days to consider whether the decision provides a basis for appeal. Moreover, Sound View’s desire to consider *Arthrex*’s “progeny” in any appeal decision reflects a period of indeterminate length that would seemingly require more than 30 days, which will necessitate additional extensions. Rule 90 does not contemplate what would effectively be an administrative stay with no readily identifiable terminus, particularly where the reason for such a prolonged extension does not speak to the merits of the subject Board decision. Lastly, nothing forecloses Sound View from pursuing an appeal now and later deciding that it does not wish to pursue any argument based on *Arthrex* or even pursuing the appeal at all. *See* FRAP 42(b).

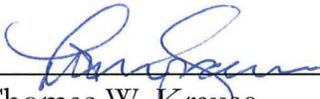
While Sound View has not provided an adequate basis to grant the additional 30 days sought, the pertinent events relating to Sound View’s Request here all occurred between November 8, 2019, and its appeal deadline of November 12, 2019. Because Sound View is receiving this decision on its extension requests on the filing deadline, the Director grants a limited extension of three (3) days on Sound View’s appeal deadline in both proceedings to permit it to execute any appeal if desired.

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 denied on its merits, but that a limited three-day extension to permit Sound View time to prepare and file any appeal if desired is granted.

Sound View's deadline for seeking judicial review of the Board decision in the two underlying proceedings here is extended to November 15, 2019.

ANDREI IANCU
UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE


By: Thomas W. Krause
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DATE: November 12, 2019

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