

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE DIRECTOR

**Canon U.S.A., Inc. and Canon Inc.**  
Petitioners,

v.

**Slingshot Printing LLC,**  
Patent Owner.

IPR2023-00313

U.S. Patent No. 7,594,708

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

**MEMORANDUM AND ORDER**

On October 2, 2024, patent owner Slingshot Printing LLC filed a request to extend the time to seek judicial review of the Patent Trial and Appeal Board decision in the underlying IPR proceeding (“Request”). The PTAB’s decision issued on July 30, 2024.<sup>1</sup> Under 37 C.F.R. § 90.3(a)(1), judicial review of a Board decision must be sought within sixty-three (63) days of the Board decision. Under 37 C.F.R. § 90.3(a)(1), Slingshot’s Notice of Appeal was due to be filed on

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<sup>1</sup> Petitioners, Canon U.S.A., Inc. and Canon Inc., (“Canon”) have not filed a response to Slingshot’s request. Nor is Canon required to. Neither 37 C.F.R. § 90.3 nor its predecessor 37 C.F.R. § 1.304(a)(3) (2012) provides for opposing or otherwise responding to a time-extension request. Thus, as explained in prior time-extension decisions, “parties should not expect the opportunity to file responsive papers, or that they will be considered if submitted.” *UWA v. AZL*, Decision on Request Under 37 C.F.R. § 1.304(a)(3)(i) at 4, Int. No. 106,013 (Feb. 26, 2016); *see Ho v. Furcht*, Decision on Request Under 37 C.F.R. § 1.304(a)(3)(i) at 2 n.2, Int. No. 105,953 (Dec. 12, 2014)). As those decisions explain, however, the Director has discretion to consider any “opposition” or “reply” thereto.

October 1, 2024. However, Slingshot filed a Notice of Appeal on October 2, 2024, one day after the deadline.

Rule 90.3(c)(1) allows parties extra time to file a notice of appeal in the Federal Circuit under two circumstances: Rule 90.3(c)(1)(i), in which the Director may extend the time for filing an appeal requested before the expiration of the period for filing an appeal with good cause, and Rule 90.3(c)(1)(ii), in which the Director may extend the time for filing an appeal requested after the expiration of the period for filing an appeal due to excusable neglect. The extension request at issue here, filed after the expiration of the period for filing the appeal notice, falls under the “excusable neglect” provision of 37 C.F.R. § 90.3(c)(1)(ii). The request is GRANTED for the reasons set forth below.

The Director may extend the time for filing a notice of appeal after the expiration of the period for filing an appeal “upon a showing that the failure to act was the result of excusable neglect.” 37 C.F.R. § 90.3(c)(1)(ii); *see also Mitsubishi Cable Indus., Ltd., et al. v. Goto Denshi Co., Ltd.*, Memorandum and Order at 2-7, Paper 28 (IPR2015-01108) (May 3, 2017) (“*Mitsubishi*”) (explaining why the Director retains authority to decide Rule 90 time-extension requests where an untimely notice of appeal has concurrently or subsequently been filed). The authority to decide such requests has been delegated to the Solicitor. *See* MPEP § 1002.02(k)(3).

In determining excusable neglect, the USPTO applies the standard used by the Federal Courts. See MPEP § 1216(VI); *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); see, e.g., *Mitsubishi*, Mem. Op. at 7-14; *IpVenture, Inc. v. FedEx Corp.*, Memorandum and Order (*Inter Partes* Reexamination Control No. 95/001,896) (Apr. 4, 2017). The Supreme Court in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993) made clear that “‘excusable neglect’ is understood to encompass situations in which the failure to comply with a filing deadline is attributable to negligence.” See *Pioneer*, 507 U.S. at 394. In *Pioneer*, the Court explained that determining whether “excusable neglect” occurred is “an equitable one, taking account of all relevant circumstances surrounding the party’s omission.” *Pioneer*, 507 U.S. at 395. And in determining whether a party’s failure to comply with a deadline was excusable, it is proper to rely on the acts and omissions of a party’s chosen counsel where relevant. *Id.* at 396-97. Generally, the factors to be considered in determining whether negligence is excusable include: [1] the danger of prejudice to another party, [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith. *Id.* at 395.

The third *Pioneer* factor—relating to why the filing was delayed—is

generally considered the most important factor in the analysis, although it does not control the inquiry. *See, e.g., FirstHealth of the Carolinas, Inc. v. Carefirst of Maryland, Inc.*, 479 F.3d 825, 829 (Fed. Cir. 2007); *Pumpkin Ltd. v. The Seed Corps*, 1997 WL 473051 at \*6 n.7 (T.T.A.B. 1997). Here, with respect to the third factor, Slingshot explains that the Notice of Appeal was late due to a paralegal’s docketing error. Request at 4-5; Affidavit of Elisa Augustyniak at 1. The October 1, 2024 filing deadline was missed because the paralegal “inadvertently failed to enter the appeal deadline in this matter.” Request at 4; Affidavit of Elisa Augustyniak at 1. There is no evidence that Slingshot chose to “flout” the filing deadline. *See Pioneer*, 507 U.S. at 388. Instead, the Request and supporting documentation indicate that, at most, Slingshot inadvertently missed the filing deadline due to a mistake. *See Pioneer*, 507 U.S. at 381 (“Congress plainly contemplated that the courts would be permitted to accept late filings caused by inadvertence, mistake, or carelessness, not just those caused by intervening circumstances beyond the party’s control.”); *Mitsubishi*, Mem. Op. at 11 (*Pioneer* “adopted a broader and more flexible test for excusable neglect . . . to include more than simply intervening circumstances beyond the party’s control.”) (internal citations and quotes omitted).

There is also no indication of bad faith under the fourth *Pioneer* factor. Slingshot’s counsel acted to remedy the missed deadline immediately, by filing a

Notice of Appeal on October 2, 2024. The failure to comply was inadvertent and Slingshot made an affirmative effort to comply with the Notice of Appeal deadline. *See Pioneer*, 507 U.S. at 395.

There is also no evidence of prejudice to the USPTO or Canon under the first *Pioneer* factor. Nor is there evidence of potential negative impact to any judicial or administrative proceedings, as relevant under the second *Pioneer* factor. The delay between expiration of the appeal filing deadline and filing of the Notice of Appeal did not result in any meaningful delay in the proceedings under the second *Pioneer* factor. These facts all weigh in favor of granting the Request.

Thus, the Director finds that application of the *Pioneer* factors here weighs in favor of granting Slingshot's requested one-day extension.

#### ORDER

Upon consideration of Slingshot's request for an extension of time under 37 C.F.R. § 90.3(c)(1)(ii), it is ORDERED that the request is **granted**. Slingshot's filing deadline to appeal from the underlying Board decision is extended from October 1, 2024 to October 2, 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  
Solicitor

DATE: October 22, 2024

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