

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR

In re Snap Inc.,

Applicant.

Decision on Request for Extension of
Time under 37 C.F.R. § 2.145(e)

Appls. Ser. Nos. 8717792, 87211997

MEMORANDUM AND ORDER

On December 8, 2021, Applicant, Snap Inc., filed a request for an extension of time of sixty-one (61) days beyond the time period provided in 37 C.F.R. § 2.145(d) within which to seek judicial review of the Trademark Trial and Appeal Board’s November 3, 2021, final decision in this case. As explained below, the request is DENIED WITHOUT PREJUDICE to re-filing before the current period within which to seek judicial review expires.

Background

37 C.F.R. § 2.145(d) provides a disappointed applicant “sixty-three (63) days from the date of the final decision of the Trademark Trial and Appeal Board” within which to seek judicial review under either 15 U.S.C. § 1071(a) (appeal) or § 1071(b) (civil action). If a written request for an extension is filed before the period in section 2.145(d) expires, the Director assesses the request under the good cause standard. 37 C.F.R. § 2.145(e)(i). If the request is filed after the expiration of the time for seeking judicial review, the Director assesses it under the more stringent excusable neglect

standard. 37 C.F.R. § 2.145(e)(ii).¹ The Board’s final decision was mailed on November 3, 2021, making the filing of any appeal or of any civil action challenging such decision due no later than January 5, 2022. Accordingly, this request for an extension of time is timely and the Director will assess whether Applicant has met the good cause standard.

The reason Applicant provides for the requested extension is that it needs “additional time to obtain and evaluate new evidence to potentially introduce in a civil action, and to evaluate whether an appeal should be taken and, if so, whether it should be by way of a civil action or the Federal Circuit.”

Discussion

The good cause standard, as it applies to requests for extensions of time, is a familiar one. It appears not only in USPTO rules, but also in the Federal Rules of Civil Procedure. *See, e.g.*, Fed. R. Civ. P. 4(m), 6(b)(1), 16(b)(4) & 31(a)(4). Generally, the party requesting an extension governed by the good cause standard must supply the tribunal with a factual showing of sufficient particularity to allow a determination whether the request meets the standard. For example, the Trademark Board Manual of Procedure (TBMP) explains that requests to extend time “must set forth with particularity the facts said to constitute good cause for the requested extension; mere

¹ The rules are substantively identical in these regards on the patent side. *See* 37 C.F.R. § 90.3.

conclusory allegations lacking in factual detail are not sufficient.” TBMP § 509.01(a) (citations omitted). As the TTAB stated in one recent decision:

Generally, the Board is liberal in granting extensions of time before the specified period has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. The moving party, however, retains the burden of persuading the Board that it was diligent in meeting its responsibilities and should therefore be awarded additional time. Moreover, a motion to extend must set forth with particularity the facts said to constitute good cause; cursory or conclusory allegations that are denied unequivocally by the non-movant, and that are not otherwise supported by the record, will not constitute a showing of good cause.

Trans-High Corp. v. JFC Tobacco Corp., 127 USPQ2d 1175, 1177 (TTAB 2018) (citations and internal quotation marks omitted)²; *see also Simio, LLC v. FlexSim Software Prod., Inc.*, 983 F.3d 1353, 2020 USPQ2d 11538, at *11 (Fed. Cir. 2020) (“Satisfying [the good cause] standard requires the movant to show the scheduling deadlines [under Fed. R. Civ. P. 16] cannot be met despite the movant’s diligent efforts. . . . Ultimately, demonstrating good cause requires the movant to provide an adequate explanation for any delay.”) (citations omitted; cleaned up); *accord Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 2021 USPQ2d 750, at *12 (Fed. Cir. 2021); *O2 Micro Int’l Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 80 USPQ2d 1769, 1775 n.10, 1777 (Fed. Cir. 2006).

² While a request to the Director to extend the time to seek judicial review of a Board decision is not technically a request to the Board, the Director agrees with the Board’s formulation of the good cause standard and applies it to timely requests under section 2.145(e)(i).

Applicant has 63 days to decide whether to seek judicial review of the Board's final decision under either 15 U.S.C. § 1071(a) or § 1071(b). 37 C.F.R. § 2.145(d). Here, there are still several weeks left in that period, and Applicant's request provides no basis for the request to extend the period another 61 days other than a need to determine if it can identify possible new evidence for a civil action under 15 U.S.C. § 1071(b) or whether instead to file an appeal under 15 U.S.C. § 1071(a). Rule 2.145(d) reflects the USPTO's judgment that, ordinarily, 63 days is sufficient time to complete those tasks. Without a reason why additional time beyond the 63 days provided is needed, this request, as filed, fails to "set forth with particularity the facts said to constitute good cause" for the requested extension. *Trans-High Corp.*, 127 USPQ2d at 1177.

Accordingly, the Director denies this request, without prejudice to the filing of a renewed and supported request before the expiration of the current period within which to seek judicial review.

ANDREW HIRSHFELD,

*Performing the functions and duties of the Under
Secretary of Commerce for Intellectual Property and
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Office*

Date: December 13, 2021

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