

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE DIRECTOR

In re Application of Signa ES Karim Omega, LLC )  
Serial No.: 88671022 )  
Mark: SIGNA ES ) Decision Under 37. CFR § 2.145(e)  
)  
TTAB Decision: April 15, 2022 )  
)

MEMORANDUM AND ORDER

On June 24, 2022, Applicant Signa ES Karim Omega, LLC (Applicant) filed with the United States Patent Office (USPTO) a Request for Reinstatement of its abandoned application alleging Office error pursuant to 37 CFR § 2.64.<sup>1</sup> In effect, Applicant is seeking an extension of time for judicial review of the April 15, 2022 Trademark Trial and Appeal Board (TTAB) decision denying a request for reconsideration. Applicant's June 24, 2022 request is construed as a request under 37 CFR § 2.145(e). The request for extension of time is GRANTED for the reasons set forth below.

Background

Under 37 CFR § 2.145(d), the period for filing a notice of appeal or a civil action expires sixty-three (63) days from the date of the TTAB's final decision. Under 37 CFR § 2.145(e), the Director may extend the time for seeking judicial review of a final TTAB decision. If the request is filed before the specified time of sixty-three days has expired, the Director assesses the request under a good cause standard. *See* 37 CFR § 2.145(e)(1)(i). But if the request is filed after the

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<sup>1</sup> The request was incorrectly filed as a Request for Reinstatement under 37 CFR § 2.64. In a decision dated October 12, 2022, the Office of the Commissioner for Trademarks advised Applicant that its request was being construed as a request for extension of time to seek judicial review of a TTAB decision under 37 CFR § 2.145(e) and forwarded to the Office of the Solicitor for decision. Requests under 37 CFR § 2.145(e) should be directed to the Office of the Solicitor, which has been delegated the authority to decide such requests for the Director. *See* TBMP § 902.02.

specified time has expired, then the request must satisfy a stricter standard: excusable neglect. See 37 CFR § 2.145(e)(1)(ii).

On April 15, 2022, the TTAB denied Applicant's Request for Reconsideration of the Board's decision affirming the examining attorney's refusal to register Applicant's mark. TTABVue Docket No. 23. The April 15, 2022 decision constituted a final agency action. Thus, to be timely, any request for an extension of time to seek judicial review was due on or before June 17, 2022.

On April 26, 2022, the USPTO inadvertently issued a Notice of Abandonment that erroneously advised Applicant that the reason for abandonment was failure to timely respond to an Office action and that Applicant could file a Request for Reinstatement within two months of the April 26, 2022 Notice. Instead of seeking judicial review by the June 17, 2022 deadline pursuant to 37 CFR § 2.145(d), Applicant filed a Request for Reinstatement on June 24, 2022, apparently relying upon the deadline in the April 26, 2022 Notice of Abandonment. By filing the June 24 request, Applicant indicated its interest in continuing the review process of its application. Because Applicant's June 24 request was not filed within sixty-three days of the Board's decision as required by 37 CFR § 2.145(e), Applicant's request will be reviewed under the excusable neglect standard.

#### Discussion

The USPTO determines whether excusable neglect has been shown by applying the analysis set forth in the Supreme Court's decision in *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993). The *Pioneer* Court identified four nonexclusive factors that could bear on whether a neglectful act or omission is excusable: “[1] the danger of prejudice to the [non-moving 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 (brackets added).

Applying the factors in order, the facts and circumstances here do not indicate that any party will be prejudiced by extending Applicant’s time to seek judicial review. There is no adverse party or non-moving party because this extension concerns an ex parte appeal of an examination decision.

Second, the request was filed only seven days after the closing of the 63-day window within which to seek judicial review, which indicates that the potential impact on the judicial proceedings would be minimal.

Third, the reason for the delay, including whether the delay was within the reasonable control of the movant, also does not weigh against a finding of excusable neglect. The Federal Circuit has noted that the USPTO’s decisions under this standard typically deem the reason for the delay, and whether it was within the control of the party requesting that the delay be excused, to be highly significant. *See FirstHealth of Carolinas, Inc. v. CareFirst of Md., Inc.*, 479 F.3d 825, 829 (Fed. Cir. 2007) (citing *Old Nutfield Brewing Co. v. Hudson Valley Brewing Co.*, 65 USPQ2d 1701 (TTAB 2002)) (further citation omitted). Here, after the TTAB denied Applicant’s Request for Reconsideration on April 15, 2022, Applicant was sent an erroneous Notice of Abandonment on April 26, 2022. The Notice of Abandonment indicated that Applicant could file a Request for Reinstatement within two months. Although the Notice provided erroneous information, Applicant reasonably understood that he could request to reinstate his application and did so. Under these circumstances where a USPTO error appears to have contributed to the delay, the third factor weighs in favor of finding excusable neglect.

Fourth, there is nothing to indicate that Applicant has acted in bad faith., such that the fourth *Pioneer* factor does not weigh against finding excusable neglect.

The relevant factors considered in light of the facts and circumstances regarding Applicant's delay warrant finding that the minimal delay here was the result of excusable neglect. It is noted that parties appearing before the USPTO must take reasonable measures to assure timely compliance with USPTO timelines and requirements. However, the "excusable neglect" standard dictates balancing all the facts where no one factor is determinative and, on balance here, the facts ultimately weigh in favor of extending Applicant's time to seek judicial review of the TTAB's decision.

#### Decision

The Director GRANTS Applicant thirty (30) days from the date of this order in which to seek judicial review of the TTAB's decision.

KATHERINE K. VIDAL

Under Secretary of Commerce for  
Intellectual Property and Director of the  
United States Patent and Trademark Office

Dated: October 12, 2022

By: /s/ Thomas W. Krause

THOMAS W. KRAUSE  
Solicitor

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