

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR

Hallmark Licensing, LLC

Opposer,

v.

Hallmark Industries, Inc.

Applicant.

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

Opposition No. 91211392

Mark: HALLMARK/Serial No. 77/457,422

Opposition No. 91215884

Mark: HALLMARK925/Serial No. 77/666,333

MEMORANDUM AND ORDER

On June 26, 2017, the applicant in these consolidated opposition proceedings, Hallmark Industries, Inc. (“Applicant”), filed a request for an extension of time to file an appeal or commence a civil action seeking review of the Board’s May 3, 2017, decision (TTABVue 50) entering summary judgment against Applicant.¹ Applicant states it seeks this extension to preserve its right to appeal the Board’s order entering summary judgment against it while Applicant awaits the Board’s decision on its June 5, 2017, motion (TTABVue 51) requesting reconsideration of, or, in the alternative, relief from, the May 3 summary judgment order. For the reasons set forth below, the request is denied without prejudice because it is premature.

Under 37 C.F.R. § 2.145(d)(4)(i), “[i]f a request for rehearing or reconsideration or modification of the Board decision is filed within the time specified in § 2.127(b), § 2.129(c), or § 2.144, or within any extension of time granted thereunder, the time for filing an appeal or commencing a civil action shall expire no later than sixty-three (63)

¹ The request for extension does not state the length of the extension requested.

days after action on the request.” So it must first be determined whether Applicant’s motion for reconsideration is timely. If it is, this request for an extension of time to appeal is premature because the time for filing an appeal has not yet begun to run.

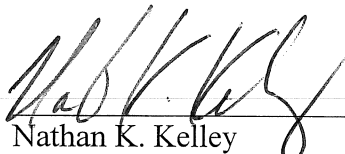
Under section 2.129(c), a motion for reconsideration “must be filed within one month from the date of the decision.” The decision that Applicant wants the Board to reconsider is dated May 3, 2017. One month from May 3, 2017, was Saturday, June 3. 37 C.F.R. § 2.196 provides that “[w]hen the day, or the last day fixed by statute or by regulation under this part for taking any action or paying any fee in the Office[,] falls on a Saturday, Sunday, or Federal holiday . . . , the action may be taken, or the fee paid, on the next succeeding day that is not a Saturday, Sunday, or a Federal holiday.” So the last day Applicant could have filed a timely motion for reconsideration was Monday, June 5, and that is what Applicant did on that day. Consequently, the time for filing an appeal or civil action to review the Board’s May 3 decision has not yet begun to run. It will begin to run when the Board issues its decision on Applicant’s motion, at which point Applicant will have 63 days to appeal or file a civil action. *See* 37 C.F.R. § 2.145(d).

Accordingly, Applicant’s request is DENIED WITHOUT PREJUDICE as premature.

JOSEPH MATAL,
*Performing the Functions and Duties of the Under
Secretary of Commerce for Intellectual Property
and Director of the United States Patent and
Trademark Office*

Date: July 7, 2017

By:


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