

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE DIRECTOR

FUJI TELEVISION NETWORK,  
INC.,

Petitioner,

v.

BRIAN PRINCE,

Respondent.

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

Cancellation No. 92/068,100

MEMORANDUM AND ORDER

On July 15, 2021, Respondent Brian Prince (“Respondent”), filed a request for an extension of time of ninety (90) days within which to file a notice of appeal of the Trademark Trial and Appeal Board’s May 14, 2021, order in this matter.

The May 14 Board order denied Respondent’s motion to reconsider the Board’s January 8, 2021, order, which, *inter alia*, granted Petitioner’s motion for summary judgment of cancellation of Respondent’s Registration No. 4,376,833. As

explained below, the request is DENIED WITHOUT PREJUDICE to re-filing within seven (7) days.

**Background**

Under 37 C.F.R. § 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 Board decision at issue. 37

C.F.R. § 2.145(e) provides that the Director may extend the time for seeking judicial review of a Board decision. 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).<sup>1</sup>

The Board's order denying Respondent's motion for reconsideration decision was mailed on May 14, 2021, and under section 2.145(d), the time for filing of any appeal or a civil action challenging such decision therefore was due no later than July 16, 2021. Respondent filed this request on July 15. Accordingly, the request is timely and the Director will assess whether Respondent has satisfied the good cause standard.

### **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

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

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 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)<sup>2</sup>; *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

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<sup>2</sup> 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).

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.*, \_\_\_ F.4th \_\_\_, 2021 WL 2932690, at \*10, 2021 USPQ2d 750, at \*12 (Fed. Cir. July 13, 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).

Respondent’s request was filed by counsel who represented Respondent before the Board. But the only reason the request provides as to why Respondent needs more than the allotted 63 days to file a notice of appeal is that Respondent “assigned an assistant to his company the task of locating counsel for filing the ... appeal,” but the assistant “left the employment of [Respondent’s] company prior to completing this task.”<sup>3</sup> This conclusory statement provides no basis for determining whether good cause exists because it fails to “set forth with particularity the facts said to constitute good cause.” *Trans-High Corp.*, 127 USPQ2d at 1177. For example, it does not explain why Respondent’s current counsel, who filed the instant request, could not file the notice of appeal, nor does it provide a basis to find that Respondent “was diligent in meeting [his] responsibilities and should therefore be awarded additional time.” *Id.* 37 C.F.R. § 2.145(d) reflects the USPTO’s judgment that, ordinarily, 63 days is sufficient time within which to complete the tasks necessary to determining whether to seek

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<sup>3</sup> The request also summarily recites that Petitioner will not be prejudiced.

judicial review and how. There must be a sufficiently particularized showing that the requesting party was diligent during the 63-day period before the Director can make a determination of whether good cause exists for extending that normally-sufficient period.<sup>4</sup>

Here, the July 15 request does not provide enough of a factual showing upon which to make a determination that Respondent was diligent and that the privilege of extensions is not being abused. As a consequence, this request is DENIED.

### **Conclusion**

For the reasons set forth above, the Director DENIES this request for a 90-day extension of time. However, because the date by which a notice of appeal was required to be filed has now passed, the Director extends the date within which Respondent may file a notice of appeal seven (7) days from the date of this order. Further, this order is without prejudice to the filing of another request for an extension of the appeal deadline, so long as it is received within the extended deadline referenced in the preceding sentence.

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<sup>4</sup> The Director also points out that the length of the requested extension is proportional to the showing required. For example, a request for a 90-day extension generally will require a more substantial showing than that required for a request for a 30-day extension.

ANDREW HIRSHFELD,  
*Performing the Functions and Duties of Under  
Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and  
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Date: July 27, 2021

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