

**UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE DIRECTOR**

**SONY MOBILE  
COMMUNICATIONS INC.,**

Petitioner,

v.

**VIZIO, INC.,**

Respondent.

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

Cancellation No. 92070572

**MEMORANDUM AND ORDER**

On March 21, 2022, Petitioner Sony Mobile Communications Inc. (“Petitioner”) filed its seventh request under 37 CFR § 2.145(e), with Respondent’s consent, for an extension of time of thirty (30) days within which to file a notice of appeal or commence a civil action seeking review of the Trademark Trial and Appeal Board’s July 20, 2021, final decision in this case. That request, along with all the prior requests in this case, cited settlement negotiations as the reason for the request. On March 21, 2022, the Director granted it, extending the time within which to seek judicial review of the Board’s final decision through and including April 20, 2022.

On April 15, 2022, Petitioner filed an eighth such request with the TTAB via the Board’s electronic filing system (ESTTA), seeking to extend the deadline to May 20, 2022. The Director learned of Petitioner’s April 15 filing several months later.

As explained below, the request is granted *nunc pro tunc*, extending the time to commence judicial review through and including September 26, 2022.

### **Preliminary Matters**

Before deciding the April 15, 2022, request, it is instructive to discuss the context in which these Rule 2.145(e) requests were made and how they were made.

#### **1. Requests for extensions of time to seek judicial review must be filed in accordance with Rules 2.145(e) and 104.2, but the requests in this case were not.**

Under 37 CFR § 2.145(e)(2), parties to Board proceedings who wish to extend the time within which to seek judicial review of final Board decisions are required to file any written request for such an extension “as provided in [37 CFR] § 104.2”<sup>1</sup> and address it “to the attention of the Office of the Solicitor.” Rule 2.145(e) also mandates that a “copy of the request should also be filed with the Trademark Trial and Appeal Board via ESTTA.” Petitioner, however, had not been filing its requests with the USPTO’s Office of the General Counsel, as required by Rule 104.2, but has been filing its requests only via ESTTA with the Board. While the Solicitor’s Office was alerted to the first seven of Petitioner’s because the Board had forwarded courtesy copies of the ESTTA-filed requests to the Solicitor’s Office, that is no substitute for filing Rule 2.145(e) requests in the manner specified in Rule 104.2.

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<sup>1</sup> Rule 104.2 provides that service via mail “should be addressed to the Office of the General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450” and that, if hand service is desired, it “should be made during business hours to the Office of the General Counsel, 10B20, Madison Building East, 600 Dulany Street, Alexandria, Virginia.”

**2. Where a request to extend the time to seek reconsideration of a Board final ruling is timely filed and the time for seeking reconsideration has not run, there is no need to also file a Rule 2.145(e) request to extend the time to seek judicial review.**

It is noted that, at the same time Petitioner filed with the Board each of its Rule 2.145(e) requests for extension of time to seek judicial review, Petitioner concurrently had also been filing requests with the Board for extensions of time to seek reconsideration of the Board’s July 20, 2021, final decision in this case. The effect of the timely<sup>2</sup> filing of a request for reconsideration is that the underlying Board decision becomes nonfinal for purposes of seeking judicial review, *i.e.*, it cannot yet be appealed or made the subject of a civil action under 15 U.S.C. § 1071(a) or (b). *See Odyssey Logistics & Tech. Corp. v. Iancu*, 959 F.3d 1104, 1109 (Fed. Cir. 2020) (quoting *Stone v. INS*, 514 U.S. 386, 392 (1995)); *see also* Wright & Miller, 16 FED. PRAC. & PROC. JURIS. § 3942, text at fn. 65 (3d ed., Edward H. Cooper, ed.) (April 2022 update) (“a timely motion to reconsider an otherwise final agency order deprives the order of finality as to the party seeking reconsideration and also suspends the time for seeking review”). The timely filing of requests with the Board to reconsider the Board’s July 2021 decision rendered that decision—at least temporarily—nonfinal, and thus Petitioner did not need to concurrently file requests to extend the time to seek judicial review.

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<sup>2</sup> A request for reconsideration of a Board decision must be filed within one month of the decision. *See* 37 CFR § 2.127(b).

## Decision

Petitioner's timely-filed April 15, 2022, request, like its prior requests, cites ongoing settlement discussions as the reason for the requested extension of time to seek judicial review, and provides details of the status of such discussions as required in prior decisions in this matter. Accordingly, good cause exists for Petitioner's April 15, 2022, request.

The requested extension date (May 20, 2022), however, has come and gone. In addition, it has now been over a year since the Board's decision in the case, and, although neither the Board nor the Director been alerted to any settlement, Petitioner has neither filed any subsequent requests to extend the time to seek reconsideration nor requested reconsideration by the TTAB. In these unusual circumstances, it is deemed appropriate to GRANT, *nunc pro tunc*, the requested extension and to provide Petitioner an additional seven (7) days from the date of this decision, through and including September 26, 2022, within which to seek judicial review. No further grants of extensions of time to seek judicial review should be expected.

KATHERINE K. VIDAL,  
*Under Secretary of Commerce for Intellectual Property  
and Director of the United States Patent and  
Trademark Office,*

Date: September 19, 2022

By:           /Thomas W. Krause/            
THOMAS W. KRAUSE  
Solicitor

Cc (via email): counsel of record as listed in TTABVUE