

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR

In re Samsung Electronics Co., Ltd.

Applicant.

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

Serial No. 90127492

Mark: SAMSUNG DIAMOND PIXEL

MEMORANDUM AND ORDER

On September 20, 2023, Applicant, Samsung Electronics Co., Ltd., filed a second request for an extension of time to seek judicial review of the June 1, 2023, final decision of the Trademark Trial and Appeal Board (Board) that affirmed the refusal under Trademark Act Section 2(d) to register the mark in Applicant's application Serial No. 90/127,492. Applicant's second request was filed before the expiration of the October 2, 2023 deadline, as extended by the Director's July 19, 2023 order, which granted Applicant's initial request for a 60-day extension of time to seek judicial review of the Board's decision. The second request is therefore timely and considered under the good cause standard. 37 C.F.R. § 2.145(d)(1).

Applicant's request explains that on August 4, 2023, Applicant filed with the Board a Petition to Cancel U.S. Registration No. 6,115,619—the registration cited as a bar to registration of Applicant's application—and that no answer to the Petition was filed by the September 17, 2023 due date.

Applicant states the following:

As good cause for seeking this extension, Applicant submits that a decision favorable to Applicant in the Petition would make the need for an appeal unnecessary. Because it is unclear when a final decision on the Petition will be issued, Applicant requests that the time for appeal be extended until such a final decision issues. If that is not possible, Applicant requests that the time for appeal be extended by ninety days.

Applicant has demonstrated good cause for an additional extension of ninety (90) days, but not for an extension until a final decision in the cancellation proceeding issues. While a favorable decision for Applicant in the cancellation proceeding ultimately may result in cancellation of the cited registration and thus could moot the basis for the refusal of Applicant's application, the cancellation proceeding may take months or years to conclude, a decision in Applicant's favor is not guaranteed, and even if Applicant prevails, it is possible that the registrant could seek judicial review of the Board's decision in that proceeding. Applicant's request to tie the deadline to seek judicial review of the Board's June 1, 2023 final decision refusing registration of its application to the date of the Board's final decision in the cancellation proceeding amounts to a request for an indefinite extension and will not be granted at this time. Applicant may, however, request additional periods of extensions of time to seek judicial review of the Board's June 1, 2023 final decision based on the status of and developments in the cancellation proceeding.

Accordingly, the request for a further 90-day extension of time is GRANTED.

Applicant has an additional 90 days, through and including January 2, 2024, within which to file a notice of appeal or civil action, or to request a further extension of time.

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

Date: October 10, 2023

By: /s/ Thomas W. Krause

Thomas W. Krause
Solicitor

cc (via e-mail) to: counsel of record as listed in TTABVUE