

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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STANDARD INNOVATION CORPORATION  
Petitioner

v.

LELO, INC  
Patent Owner

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Case IPR2014-00148  
Patent 7,749,178 B2

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Before PHILLIP J. KAUFFMAN, JACQUELINE WRIGHT BONILLA, and  
CHRISTOPHER L. CRUMBLEY, *Administrative Patent Judges*.

KAUFFMAN, *Administrative Patent Judge*.

DECISION  
Patent Owner's Motion to Deem  
Filing of Patent Owner Response as Timely  
*37 C.F.R. § 42.5(c)(3)*

On September 2, 2014, Patent Owner, Lelo, Inc., filed a motion to deem the Patent Owner's Response to the Petition (Paper 12, "the Response") to be timely filed (Paper 14, "Mot."). Petitioner, Standard Innovation Corporation, opposes that motion, asking that the Response be expunged (Paper 15, "Opp."). Alternatively, should the Board grant Patent Owner's motion, Petitioner asks that Due Date 2 be changed from October 22, 2014, to November 12, 2014. *Id.* For the reasons stated below, Patent Owner's motion is *granted*.

In support of its motion, Patent Owner provides the Declaration of Ms. Betti J. Walrod, the person responsible for filing the Response. Ex. 2022. Ms. Walrod asserts that she began filing the Patent Owner Response on August 18, 2014, at 11:45 p.m. Eastern Daylight Time (EDT), and due to "technical difficulties" presented by the Patent Review Processing System (PRPS), was unable to complete filing the Response until August 19, 2014, at 12:31 a.m. EDT. Ex. 2022 ¶¶ 1-19; *see also* Mot. 1-2 (summarizing Ms. Walrod's efforts). The Response was due by Due Date 1 of August 18, 2014 (Paper 10 at 2), and consequently, the Response was 31 minutes late.

Petitioner contends that the delay in filing was caused by avoidable delay and user error, and further contends that Patent Owner has not presented evidence of PRPS presenting technical difficulties. Opp. 1-4.

A late action will be excused either on a showing of good cause or upon a Board decision that consideration on the merits would be in the interests of justice. 37 C.F.R. § 42.5(c)(3). This rule must be construed to secure the just, speedy, and inexpensive resolution of every proceeding. 37 C.F.R. § 42.1(b). We consider the timeliness of the Response in the context that Due Date 1 is not a statutory deadline; rather, it is an intermediate deadline that may be changed by agreement of the parties.

Weighing the prejudice to Petitioner of the 31 minute delay against the prejudice to Patent Owner of not considering the Response, we determine that it would be in the interests of justice to excuse Patent Owner's late action. To prevent any potential prejudice to Petitioner caused by the 31 minute filing delay, we shall also extend Due Date 2 by a day. The remainder of the schedule is unchanged.

We note that Patent Owner began the 10 minute process<sup>1</sup> of uploading the Response at 15 minutes prior to the deadline. Although we are mindful that filings will at times be made close to the deadline, the amount of time allotted here was less than ideal because it did not permit for any difficulties. Patent Owner is reminded of the duty to make a good faith effort to meet deadlines. *See* 37 C.F.R. §§ 42.5(c)(3), 42.11, 42.12.

In light of the foregoing, it is hereby

ORDERED that, Patent Owner's motion to deem the Response timely filed is granted;

ORDERED that Due Date 2 is changed as follows:

DUE DATE 2.....October 23, 2014; and

FURTHER ORDERED that DUE DATES 3-7 remain as follows:

DUE DATE 3 ..... November 19, 2014

DUE DATE 4 ..... December 3, 2014

DUE DATE 5 ..... December 12, 2014

DUE DATE 6 ..... December 19, 2014

DUE DATE 7 ..... January 9, 2015.

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<sup>1</sup> *See* Ex. 2022 ¶ 20 (stating that once properly logged in, the upload took under ten minutes).

IPR2014-00148  
Patent 7,749,178 B2

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