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Table with columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO., EXAMINER, ART UNIT, PAPER NUMBER, MAIL DATE, DELIVERY MODE. Includes application details for 90/014,880 and examiner ESCALANTE, OVIDIO.

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS

April 7, 2022

LISTON ABRAMSON LLP
THE CHRYSLER BUILDING
405 LEXINGTON AVE., 46TH FLOOR
NEW YORK, NY 10174

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. : 90/014,880
PATENT NO. : 10,469,614 B2
ART UNIT : 3992

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above-identified ex parte reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the ex parte reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

Decision on Petition for Extension of Time in Reexamination	Application No. 90/014,880	Applicant(s) 10,469,614 B2
	Examiner Ovidio ESCALANTE	Art Unit 3992

1. THIS IS A DECISION ON THE PETITION FILED 04/06/22 (Fee paid on 04/07/2022).
2. THIS DECISION IS ISSUED PURSUANT TO:
- A. 37 CFR 1.550(c) – The time for taking any action by a patent owner in a third party requested *ex parte* reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified.
- B. 37 CFR 1.550(c) – The time for taking action by a patent owner in a patent owner requested *ex parte* reexamination proceeding will only be extended for more than two months for sufficient cause and for a reasonable time specified.
- C. 37 CFR 1.956 – The time for taking any action by a patent owner in an *inter partes* reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified.

The petition is before the Central Reexamination Unit for consideration.

3. FORMAL MATTERS: Patent Owner requests that the time period for filing a response to the Non-Final Office action mailed 02/24/22, which set a two (2) month period to file a response (due 04/25/22 pursuant to the weekend/holiday rule in 37 CFR 1.7(a)), be extended by an additional one (1) month (due 05/24/22).
- A. Petition fee per 37 CFR § 1.17(g):
- i. Petition includes authorization to debit a deposit account.
- ii. Petition includes authorization to charge a credit card account.
- iii. Other: _____.
- B. Proper certificate of service was provided. (Not required in reexamination where patent owner is requester.)
- C. Petition was timely filed.
- D. Petition properly signed.

4. DECISION (See MPEP 2265 and 2665)

- A. Granted or Granted-in-part for **one (1) additional month**. (See 37 CFR 1.550(c) and 37 CFR 1.956).
- i. Other/comment: see attached explanation and below CONCLUSION.
- B. Dismissed because:
- i. Formal matters (See unchecked box(es) (A, B, C and/or D) in section 3 above).
- ii. Petitioner failed to provide a factual accounting of reasonably diligent behavior by all those responsible for preparing a response to the outstanding Office action within the statutory time period.
- iii. Petitioner failed to explain why, in spite of the action taken thus far, the requested additional time is needed.
- iv. The statements provided fail to establish sufficient cause to warrant extension of the time for taking action (See attached).
- v. The petition is moot.
- vi. Other/comment: _____.

5. CONCLUSION: **The 04/06/22 “SECOND REQUEST FOR EXTENSION OF TIME . . . UNDER 37 C.F.R. § 1.550(c)(2)” is hereby granted for one (1) additional month for showing “sufficient cause” (i.e., setting forth a factual accounting of reasonably diligent behavior including a statement of what action the patent owner has taken to provide a response and why, in spite of the action taken thus far, the requested additional time is needed). See attached explanation and PET., p. 2; see also MPEP 2265, Roman Numeral VI, 1st, 3rd, and 5th paras. Accordingly, the time period for Patent Owner to respond to the 02/24/22 Non-Final Office action is extended for one (1) additional month from 04/25/22, pursuant to the weekend/holiday rule in 37 CFR 1.7(a), to 05/24/22. Thus, the response is due by the end of the day on Tuesday, 05/24/22.**

Telephone inquiries with regard to this decision should be directed to Gay Ann Spahn at 571-272-7731 in the CRU.

/Gay Ann Spahn/, Supervisory Patent Reexamination Specialist, Central Reexamination Unit

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Continuation of 4 A i: In *ex parte* reexamination proceeding assigned control number 90/014,880, a Non-Final Office action was mailed on February 24, 2022. The February 24, 2022 Non-Final Office action set a two (2) month shortened statutory period making the response due Monday, April 25, 2022 pursuant to the weekend/holiday rule in 37 CFR 1.7(a).

On March 5, 2022, a "**REQUEST FOR AN EXTENSION OF TIME IN EX PARTE REEXAMINATION UNDER 37 C.F.R. § 1.550 (c) (2)**" (hereinafter "First Request") was filed seeking an additional two (2) months to file a response to the February 24, 2022 Non-Final Office action. The March 5, 2022 First Request, if granted, would have extended the time period for response to the February 24, 2022 Non-Final Office action for two (2) additional months from April 25, 2022, pursuant to the weekend/holiday rule in 37 CFR 1.7(a), to Friday, June 24, 2022. However, a "**Decision on Petition for Extension of Time in Reexamination**" was mailed on March 27, 2022 which dismissed the March 5, 2022 First Request for failure to comply with formal matters, failure to show "sufficient cause," and failure to establish a "extraordinary situation."

On April 6, 2022, a "**SECOND REQUEST FOR AN EXTENSION OF TIME IN EX PARTE REEXAMINATION UNDER 37 CFR § 1.550 (c) (2)**" (hereinafter "Second Request") was filed seeking an additional one (1) month to file a response to the February 24, 2022 Non-Final Office action. The April 6, 2022 Second Request, if granted, would extend the time period for response to the February 24, 2022 Non-Final Office action for one (1) additional month from April 25, 2022, pursuant to the weekend/holiday rule in 37 CFR 1.7(a), to Tuesday, May 24, 2022.

The instant April 6, 2022 Second Request indicates that: (1) "[t]he action includes **64 pages**," "is based on **4 different rejection bases**," and "includes **65 claim rejections**, based on different combinations of **8 references**"; (2) the "**Patent [has] already [been] validated by [a] Jury**"; (3) there are "**Multiple related proceedings**"; and (4) there is an "**Official holiday**" during the period for response." Second Request, pp. 2-4.

These considerations are noted. However, they must be balanced with the statutory requirement of special dispatch under 35 USC 305.

The Manual of Patent Examining Procedure (MPEP) § 2265, Roman Numeral VI, entitled "**REQUIREMENTS FOR A SHOWING OF SUFFICIENT CAUSE AND AN EXTENSION FOR A REASONABLE TIME**" indicates, in pertinent part, that:

Requests for any extension of time in third party requested reexaminations, . . . , must include a showing of sufficient cause, and the extension must be for a reasonable time.

. . .

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Any request for an extension of time, . . . , must fully state the reasons therefor. The reasons must include a statement of what action the patent owner has taken to provide a response as of the date the request for extension is submitted, and why, in spite of the action taken thus far, the requested additional time is needed. The statement must include a factual accounting of reasonably diligent behavior by all those responsible for preparing a response to the outstanding Office action within the statutory time period.

However, in third party requested ex parte reexaminations, a first request for an extension of time will generally be granted if a sufficient cause is shown, and for a reasonable time specified — usually one month.

The reasons stated in the request will be evaluated by the CRU SPRS or TC Director, and the requests will be favorably considered where there is a factual accounting of reasonably diligent behavior by all those responsible for preparing a response within the statutory time period.

Second or subsequent requests for an extension of time and requests for an extension of more than one month in third party requested reexaminations will only be granted in extraordinary situations.

Emphases added.

Patent Owner's instant April 6, 2022 Second Request, which seeks an extension of time for one (1) additional month, must be evaluated under the "sufficient cause" standard according to MPEP § 2265 VI as set forth above (i.e., the petition/request "must fully state the reasons therefor," "[t]he reasons must include a statement of what action the patent owner has taken to provide a response as of the date the request for extension is submitted, and why, in spite of the action taken thus far, the requested additional time is needed," and "[t]he statement must include a factual accounting of reasonably diligent behavior by all those responsible for preparing a response to the outstanding Office action within the statutory time period.").

With respect to sufficient cause, Patent Owner's instant April 6, 2022 Second Request includes a factual accounting of reasonably diligent behavior by providing a statement of what action the patent owner has taken to provide a response as of the date the request

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for extension is submitted. See Second Request, p. 2, 1st para. under heading "1. Actions taken to date," namely, "[t]he undersigned has been diligently working towards drafting a response that will address the grounds of rejection in the non-final action dated February 24, 2022," and "[t]he undersigned has analyzed the issues in the non-final office action and has begun discussing the issued with the Patent Owner and with other attorneys of the Patent [O]wner."

Patent Owner's instant April 6, 2022 Second Request sufficiently explains why more time is necessary. See Second Request, p. 2, 2nd para. under heading "1. Actions taken to date," wherein it is stated that "additional time is needed in order to afford Patent Owner [time] to study the presented references in the non-final office action."

Accordingly, Patent Owner has shown "sufficient cause."

Therefore, it is agreed that Patent Owner needs to be given ample opportunity to complete all aspects of investigation prior to the filing of a response to the February 24, 2022 Non-Final Office action in *ex parte* reexamination proceedings.

In view of the foregoing, the instant April 6, 2022 Second Request is hereby granted for showing "sufficient cause," and the time period for filing a response to the February 24, 2022 Non-Final Office action is now extended by one (1) additional month from April 25, 2022, pursuant to the weekend/holiday rule in 37 CFR 1.7(a), to Tuesday, May 24, 2022.