



THINK FORWARD

PTAB Decided To Institute IPR Filed After Statutory One Year Time Bar

The Patent Trial and Appeal Board (PTAB) recently decided to institute *Inter Partes review* (IPR) filed by Samsung Electronics Co., Micron Technology, Inc., and SK Hynix, Inc. (“Petitioner”) despite IPR petition was filed after the statutory one year period expired.

Two of the real-parties-interest of Samsung Electronics Co., i.e., Samsung Austin Semiconductor LLC, (“SAS”) and Samsung Semiconductor Inc. (“SSI”), were served with a complaint alleging infringement of U.S. Patent No. 8,629,542 (“the ‘542 patent”) on December 24, 2014, triggering a statutory bar date of December 24, 2015 by which Petitioner had to file its IPR petition. Under 35 U.S.C. § 315(b), “[a]n *inter partes review* may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent.”

However, Petitioner’s IPR petition was filed on December 28, 2015, which was four days after the statutory one year for SAS and SSI had expired. In the petition, Petitioner explained that it filed its petition on December 28, 2015, because the Office considered December 22-24, 2015 to be a “Federal holiday within the District of Columbia” pursuant to 35 U.S.C. §21. On December 22, 2015, the Office experienced a major power outage at its headquarters in Alexandria, Virginia, resulting in damaged equipment that required the subsequent shutdown of many USPTO online and information technology systems. On December 28, 2015, the Office announced that “[i]n light of this emergency situation, the USPTO will consider each day from Tuesday, December 22, 2015, through Thursday, December 24, 2015, to be a “Federal holiday within the District of Columbia” under 35 U.S.C. § 21 and 37 C.F.R. §1.6, 1.7, 1.9, 2.2(d), 2.195, and 2.196.”

The Board disagreed with the patent owner’s argument that the Office lacks the authority to treat December 22-24, 2015 as federal holiday. Then, the PTAB determined that “Petitioner complied with the requirement of section 315(b) given the circumstances of the power outage during the December 22-24, 2015 time-frame and the announcements by the Office regarding the same. December 28, 2015 was the next succeeding business day after December 24, 2015” as set forth in 35 U.S.C. § 21(b) (“When the day, or the last day, for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or fee paid, on the next succeeding secular or business day.”). For the related issue, please see the blog posted May 31, 2016 entitled [“PTAB DENIES IPR PETITIONS AS TIME BARRED BY ONE DAY DESPITE ALLEGED ‘TECHNICAL ISSUES’ WITH PRPS.”](#)

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