

## Payment Confirmation Establishes Filing Date in IPR Petitions

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In a Precedential Opinion Panel, the Patent Trial and Appeal Board held that confirmation of payment of fees via wire transfer was sufficient to establish a filing date for a petition for *inter partes* review (“IPR”). In *Toshiba America Electronic Components, Inc. v. Monument Peak Ventures, LLC*, IPR2021-00330, (PTAB Jan. 14, 2022) (Paper 20), the panel dealt with the issue of what counts as sufficient evidence of compliance with the relevant rules governing IPR fee payments - 35 U.S.C. § 312(a)(1) and 37 C.F.R. §§ 42.103(a)-(b).

To avoid a 35 U.S.C. § 315(b) time-bar, Toshiba filed a Motion to Correct Filing Date, requesting the filing date of their petition be pushed back five days. Toshiba argued that all statutory and regulatory requirements for filing the IPR petition were met on the earlier date, when the wire transfer of fees was shown as “Completed” and “Successful” by the Fedwire system. In response, Monument Peak Ventures argued Toshiba failed to show that the USPTO “received” the payment before the time bar under § 315(b) took effect.

In accordance with 35 U.S.C. § 312(a) and 37 C.F.R. § 42.103, the required filing fee must “accompany” a petition and no filing date will be “accorded ... until full payment is received.” The panel held that the Fedwire confirmation was sufficient evidence that the fee “accompanied” the IPR petition because Toshiba “did everything in its power to pay the fee as instructed, and that the fee transfer was successful.” The panel also held that the result complies with Article 4A of the Uniform Commercial Code, which states that an originator of a funds transfer pays the beneficiary once the beneficiary’s bank *accepts* the transfer.

Based on these determinations, the Panel granted the Request for Rehearing and vacated the Board’s decision denying institution; however, the petition was ultimately denied based on an intervening Federal Circuit Rule 36 judgment affirming a finding that all challenged claims were invalid.

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