

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CHARLES BERTINI,

Appellant,

v.

APPLE INC.,

Appellee.

No. 21-2301

**APPELLEE APPLE INC.’S UNOPPOSED MOTION FOR A
29-DAY EXTENSION OF TIME TO FILE A PETITION FOR
PANEL AND/OR EN BANC REHEARING**

Pursuant to Federal Rule of Appellate Procedure 26(b), Appellee Apple Inc. respectfully moves this Court for a 29-day extension of time, up to and until June 2, 2023, to file a petition for panel rehearing and/or rehearing *en banc*. Apple has not previously requested an extension of time to file a petition for rehearing. Appellant Charles Bertini’s counsel has indicated that Mr. Bertini does not oppose Apple’s motion.

On April 4, 2023, the Court issued its opinion and entered judgment reversing the Trademark Trial and Appeal Board’s (“TTAB”) dismissal of Appellant’s opposition of Apple’s application to register the mark APPLE MUSIC (Ser. No. 86/659,444). Under Federal Circuit Rule 40(d), the deadline for Apple to file a petition for panel rehearing and/or rehearing *en banc* is May 4, 2023.

An extension is warranted for several reasons. **First**, Apple recently has engaged undersigned counsel in this appeal. As the panel recognized, this case “raises a question of first impression.” Slip Op. 7. It also involves an extensive factual record both in the TTAB and in this Court. As a result, Apple’s new counsel requires time to review the record, consider the novel issues involved, and prepare the petition on Apple’s behalf.

Second, Apple’s new counsel has numerous pressing commitments that separately warrant an extension to June 2, 2023. For example, the Final Pre-Trial Conference in *Hayden v. Take-Two Interactive Software, Inc.*, No. 1:17-cv-02635 (N.D. Ohio) is May 2, 2023; rebuttal expert reports are due in *Teradyne v. Astronics Test Systems, Inc.*, No. 2:20-cv-02713 (C.D. Cal.) on April 28, 2023 and will be immediately followed by expert depositions; several expert depositions are scheduled in *Delta Air Lines, Inc. v. Marriott International, Inc.*, No. 1:20-cv-01125 (N.D. Ga.), including on May 8, 2023 and May 9, 2023, and expert discovery closes on May 24, 2023; counsel will be out of town for business-related travel between May 10, 2023 to May 12, 2023; a reply brief in support of summary judgment is due in *UAB “Planner5D” v. Meta Platforms, Inc. et al*, No. 3:19-cv-03132 (N.D. Cal.) on May 26, 2023. In addition, the International Trademark Association is holding its Annual Meeting in Singapore the week of May 14, 2023, for which counsel has numerous obligations as a committee leader and former

Counsel of the Association and will not be returning to the United States until May 25, 2023.

Accordingly, Apple respectfully requests a 29-day extension of time to file a petition for panel rehearing and/or rehearing *en banc*.

Dated: April 24, 2023

Respectfully submitted,

/s/ Dale M. Cendali

Dale M. Cendali
Joshua L. Simmons
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800
dale.cendali@kirkland.com
joshua.simmons@kirkland.com

Joseph Petersen
KILPATRICK TOWNSEND &
STOCKTON LLP
1080 Marsh Road
Menlo Park, California 94025
(650) 614-6427
jpetersen@kilpatricktownsend.com

J. David Mayberry
Sara K. Stadler
KILPATRICK TOWNSEND &
STOCKTON LLP
1114 Avenue of the Americas
New York, New York 10036
(212) 775-8830
dmayberry@kilpatricktownsend.com
tdavis@kilpatricktownsend.com
sstadler@kilpatricktownsend.com

Theodore H. Davis Jr.
KILPATRICK TOWNSEND &
STOCKTON LLP
1100 Peachtree Street NE, Suite 2800
Atlanta, Georgia 30309
(404) 815-6534
tdavis@kilpatricktownsend.com

Adam C. Charnes
KILPATRICK TOWNSEND &
STOCKTON LLP
2001 Ross Avenue, Suite 4400
Dallas, Texas 75201
(214) 922-7106
acharnes@kilpatricktownsend.com

William M. Bryner
KILPATRICK TOWNSEND &
STOCKTON LLP
1001 W. Fourth Street
Winston-Salem, North Carolina 27101
(336) 607-7482
bbryner@kilpatricktownsend.com

Attorneys for Appellee Apple Inc.

**IN THE UNITED STATES COURT OF APPEALS
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CHARLES BERTINI,

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No. 21-2301

**DECLARATION OF DALE M. CENDALI IN SUPPORT OF
APPELLEE APPLE INC.'S UNOPPOSED MOTION FOR A 29-DAY
EXTENSION OF TIME TO FILE A PETITION FOR
PANEL AND/OR EN BANC REHEARING**

I, Dale M. Cendali, declare as follows:

1. I am a partner in the law firm Kirkland & Ellis LLP and counsel for Appellee Apple, Inc. I am over the age of 18 and have personal knowledge of the matters set forth herein.

2. I submit this declaration in support of Appellee Apple Inc.'s Unopposed Motion for a 29-Day Extension of Time to File a Petition for Panel and/or *En Banc* Rehearing.

3. Appellant Charles Bertini's counsel has been informed of Apple's motion and has indicated that Mr. Bertini does not oppose.

4. Apple's petition for panel and/or *en banc* rehearing is currently due on May 4, 2023. If this motion is granted, Apple's petition for panel and/or *en banc* rehearing will be due on June 2, 2023.

5. Apple has not previously requested an extension of time to file a petition for panel and/or *en banc* rehearing.

6. This appeal arises from an opposition action originally filed in the Trademark Trial and Appeal Board (the "TTAB") in 2016. On April 4, 2023, the Court issued its opinion and entered judgment reversing the TTAB's dismissal of Appellant's opposition of Apple's application to register the mark APPLE MUSIC (Ser. No. 86/659,444). *See Bertini v. Apple Inc.*, No. 21-2301 (Fed. Cir. April 4, 2023).

7. Kirkland & Ellis LLP was recently engaged as counsel in this appeal, and this case involves an extensive factual record both in the TTAB and in this Court. As a result, we need time to review the record, consider the novel issues involved, and prepare the petition on Apple's behalf.

8. We have numerous pressing commitments that separately warrant an extension to June 2, 2023. For example, the Final Pre-Trial Conference in *Hayden v. Take-Two Interactive Software, Inc.*, No. 1:17-cv-02635 (N.D. Ohio) is May 2, 2023; rebuttal expert reports are due in *Teradyne v. Astronics Test Systems, Inc.*, No. 2:20-cv-02713 (C.D. Cal.) on April 28, 2023 and will be immediately followed

by expert depositions; several expert depositions are scheduled in *Delta Air Lines, Inc. v. Marriott International, Inc.*, No. 1:20-cv-01125, including on May 8, 2023 and May 9, 2023, and expert discovery closes on May 24, 2023; several members of our team will be out of town for business-related travel between May 10, 2023 to May 12, 2023; a reply brief in support of summary judgment is due in *UAB “Planner5D” v. Meta Platforms, Inc. et al*, No. 3:19-cv-03132 (N.D. Cal.) on May 26, 2023. In addition, the International Trademark Association is holding its Annual Meeting in Singapore the week of May 14, 2023, for which I have numerous obligations as a committee leader and former Counsel of the Association and will not be returning to the United States until May 25, 2023.

9. Accordingly, Apple respectfully requests a 29-day extension of time to file a petition for panel rehearing and/or rehearing *en banc*.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 24, 2023, in New York, NY

/s/ Dale M. Cendali

Dale M. Cendali
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800
dale.cendali@kirkland.com

Counsel for Appellee Apple, Inc.

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the undersigned certified that this motion complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d). Exclusive of the portions exempted by Federal Circuit Rule 32(b) and Federal Rule of Appellate Procedure 32(f), this motion contains 412 words, as counted by the word-processing system used to prepare the motion.

Date: April 24, 2023

/s/ Dale M. Cendali

Dale M. Cendali
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800
dale.cendali@kirkland.com

Counsel for Appellee Apple, Inc.

CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rule 47.4(a), Appellee Apple Inc. states as follows:

(1) Provide the full names of all entities represented by undersigned counsel in this case.

Apple Inc.

(2) Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.

None.

(3) Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.

None.

(4) List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court.

Eric Loverro, Kirkland & Ellis LLP
Jason M. Gonder, Kilpatrick Townsend & Stockton LLP
Glenn A. Gunderson, Dechert LLP
Daniel P. Hope, Dechert LLP

(5) Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly

affected by this court's decision in the pending appeal. Do not include the originating case numbers(s) for this case.

None.

(6) Provide any information required under Fed. R. App. P. 261(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees).

Not applicable.

Date: April 24, 2023

/s/ Dale M. Cendali

Dale M. Cendali
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800
dale.cendali@kirkland.com

Counsel for Appellee Apple, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2023, I caused a true and correct copy of the foregoing **APPELLEE APPLE INC.'S UNOPPOSED MOTION FOR A 29-DAY EXTENSION OF TIME TO FILE A PETITION FOR PANEL AND/OR *EN BANC* REHEARING** and accompanying declaration and certificates to be filed electronically with the Clerk of Court via CM/ECF and thereby served through CM/ECF.

Date: April 24, 2023

/s/ Dale M. Cendali

Dale M. Cendali
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800
dale.cendali@kirkland.com

Counsel for Appellee Apple, Inc.