UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AGILYSYS, INC., ET AL.
Petitioner

v.

AMERANTH, INC.
Patent Owner

Case CBM2014-00016
Patent No. 6,871,325

MAIL STOP PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
Post Office Box 1450
Alexandria, Virginia 22313-1450

Submitted Electronically via the Patent Review Processing System

PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO RECONSTITUTE PETITIONER TO EXCLUDE APPLE INC. UNDER 37 C.F.R. §42.20

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Regulations

PTAB Proceedings

Petitioner has requested that the Board reconstitute Petitioner to exclude Petitioner Apple, Inc. from CBM2014-00013, -00014, -00015 and -00016. For the reasons detailed below, the request should be denied.

I. The Board Should Deny Apple's Request To Withdraw, Or Alternatively Allow Apple To Be Terminated Under Adverse Judgment

There is no statutory authority or provision under the PTAB Rules to dismiss a party who files a petition other than (1) termination of the proceeding against such party as a result of settlement (37 C.F.R. §42.74) or (2) entry of adverse judgment against such party (37 C.F.R. §42.73(b)(4)). Petitioner Apple has not sought a settlement with Ameranth and Apple has withdrawn its previous offer to accept entry of adverse judgment against it. There is thus no basis for allowing Apple to withdraw.[1]

Ameranth submits that the only vehicle for termination of Apple from these proceedings, absent settlement, is entry of adverse judgment against Apple under 37 C.F.R. §42.73(b)(4). Apple's counsel first proposed the adverse judgment route in meet-and-confer discussions with counsel for Ameranth. In response, Ameranth advised Apple in writing that it would consent to withdrawal of Apple pursuant to

[1] Apple first sought only to withdraw, but never mentioned re-filing petitions until the Board ordered briefing on the issue in the context of Apple's request to withdraw. While Apple originally told the Board that it was unable to be represented by the same counsel as the other parties to the Petitions, Apple did not say why. As is now clear from Petitioner's Motion, the reason is that Apple wants to be "represented by counsel of its choice." Apple is thus clearly not, *e.g.*, faced with an irreconcilable conflict. Note that Ameranth is not waiving its conflict of interest objections currently stayed in the District Court. *See* Exhs. 2001, 2002.

adverse judgment if Apple would agree to application of estoppel as if the Board had rendered a Final Decision in these proceedings adverse to Apple on all issues as to which estoppel would apply based on such a Final Decision. After realizing that its request to withdraw carried estoppel implications, Apple rejected Ameranth's proposal and withdrew its offer to accept entry of adverse judgment.

Ameranth submits that any termination of Apple from these proceedings must leave Ameranth in no worse position than it would be in had Apple not been terminated. Ameranth's proposed stipulated conditions are required to guarantee that will happen, and further to avoid establishing a precedent allowing a party who files a petition to unilaterally walk away from that petition at a time of its own choosing with no potential ill effects. Applying estoppel ***as of the date of the termination*** is the only way to prevent future petitioners from gaming the system by withdrawing from a proceeding involving other parties at opportune times and "waiting to see what happens." Such withdrawing petitioners would get all of the upside benefit if the matter is later decided favorably to the remaining petitioners, but would suffer none of the downside risk if the matter is subsequently decided adversely to the remaining petitioners. That cannot be what the AIA intended by expressly providing for estoppel against petitioners.

Allowing Apple to withdraw from the present proceedings, re-file the Petitions, and then file motions to join, will create a needless burden on the Board and on Ameranth, and all for a mere speculative future need.[2] Petitioner's Motion

[2] Petitioner admitted in its Motion that Apple has no present need to be represented by different counsel from the counsel representing other parties to the Petitions:

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.