

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

DELL INC.,  
Petitioner

v.

NETWORK-1 SECURITY SOLUTIONS, INC.,  
Patent Owner

---

CASE IPR: **IPR2013-00385**

---

**MOTION FOR JOINDER UNDER 35 U.S.C. § 315(c),  
37 C.F.R. §§ 42.22, AND 42.122(b)**

Mail Stop **Patent Board**  
Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dell Inc. ("Dell") submits concurrently herewith a Petition for *Inter Partes* Review of U.S. Patent No. 6,218,930 (the "'930 Patent") ("Petition"). Dell respectfully requests that its Petition be granted and moves that the proceedings be joined pursuant to 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.22, and 37 C.F.R. § 42.122(b) with the pending *inter partes* review initiated by Avaya Inc. ("Avaya") concerning the same patent: *Avaya Inc. v. Network-1 Security Solutions, Inc.*, Case No. IPR2013-00071 (the "Avaya IPR").

In accordance with the Board's Representative Order identifying matters to be addressed in a motion for joinder (Paper No. 15, IPR2013-00004, April 24, 2013), Dell submits that: (1) joinder is appropriate because it will promote efficient determination of the validity of the '930 Patent without prejudice to Avaya or Network-1 (*See, e.g.*, Paper No. 10, IPR2013-00256, June 20, 2013 (granting motion for joinder under similar circumstances)); (2) Dell's petition raises the same grounds of unpatentability as Avaya; (3) joinder would not affect the pending schedule in the Avaya IPR nor increase the complexity of that proceeding, minimizing costs; and (4) Dell is willing to agree to consolidated filings with Avaya to minimize burden and schedule impact. Absent joinder, Dell could be prejudiced if the Avaya IPR is terminated before a final written decision is issued as it would have to litigate the same positions at the District Court under a higher burden of proof. Accordingly, joinder should be granted.

## I. Background and Related Proceedings

Network-1 Security Solutions, Inc., is the owner of the '930 Patent. In 2011, Network-1 sued twenty-six (26) different companies, including Dell and Avaya, for allegedly infringing the '930 Patent by selling devices that are compliant with the IEEE 802.3af and 802.3at Power over Ethernet ("PoE") standards (the "Underlying Litigation").

In addition to the Underlying Litigation, the '930 Patent is the subject of a pending *ex parte* reexamination proceeding (Control No. 90/012,401) in which claims 6, 8, and 9 have been non-finally rejected on multiple anticipation and obviousness grounds. Neither Dell nor Avaya are the real party-in-interest in that proceeding, which has been stayed by the Board pending outcome of the Avaya IPR and another petition for *inter partes* review of the '930 Patent, IPR2013-00092 (See Paper No. 9, IPR2013-00071).<sup>1</sup>

Avaya Corporation filed its petition for *inter partes* review of the '930 Patent on December 5, 2012. On March 5, 2013, the Underlying Litigation was stayed pending the outcome of both the Avaya IPR and IPR2013-00092. The Board instituted trial in the Avaya IPR on May 24, 2013 (Paper No. 18, IPR 2013-

---

<sup>1</sup> That petition was submitted by Sony Corporation of America and has been denied (Paper No. 21, IPR2013-00092). Sony has requested rehearing (Paper No. 22, IPR2013-00092).

00071) on Grounds 1 and 3 in Avaya's petition and set July 24, 2013, as the date for Network-1's response to the petition (Paper No. 19). On June 7, 2013, Avaya requested a limited rehearing on the subject of its Ground 5 (Paper No. 20). The Board has not yet acted on this request. Oral argument is currently set for December 17, 2013.

## **II. Dell's petition and motion for joinder are timely**

Dell's Petition and the instant motion for joinder are timely under 35 U.S.C. 315(c), 37 C.F.R. §§ 42.22, and 42.122(b), as they are being submitted within one month of May 24, 2013, the date that the Avaya IPR was instituted.<sup>2</sup> Dell's filings are within the time period prescribed by the statute and the regulations for filing such a petition and motion for joinder.

Network-1's counsel stated on the June 24, 2013 conference call that it believes Dell's petition is untimely and referred the Board to an Opposition to a Petitioner's Motion for Joinder filed in IPR2013-00319. (*See* Paper No. 16, IPR2013-00319, June 11, 2013) (the "Opposition"). The Opposition takes a number of rather radical positions including that the USPTO has misinterpreted 35

---

<sup>2</sup> On June 24, 2013, at the Board's request, counsel for Petitioner Dell conducted a conference call with the Board, counsel for Petitioner Avaya in IPR2013-00071, and counsel for Patent Owner Network-1. During the call, the Board authorized the filing of the instant motion.

U.S.C. §§ 315(b) and 315(c), has exceeded its statutory authority when promulgating its regulations relating to joinder, and that every decision by the Board on joinder to date is wrong. (*Id.* at 2-5.)

Dell disagrees with Network-1's position and respectfully submits that the USPTO and the Board are properly interpreting 35 U.S.C. §§ 315(b) and 315(c) and that the USPTO's regulations are properly promulgated. *See, e.g.*, 35 U.S.C. § 316(a)(12) (authorizing the Director to set a time limit for requesting joinder); 37 C.F.R. 42.122(b) (setting a time limit of one-month); *see also* Changes to Implement Inter Partes Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, Federal Register, Vol. 77, No. 157 at 48690 (“the time period set forth in § 42.101(b) shall not apply when the petition is accompanied by a request for joinder. This is consistent with the last sentence of 35 U.S.C. 315(b), as amended”).

Dell respectfully submits that the statutory interpretation advanced by the Opposition (as apparently adopted by Network-1) is incorrect. The last sentence of 35 U.S.C. § 315(b) plainly states that the “[the one-year time limit] set forth in the preceding sentence *shall not apply to a request for joinder under subsection (c).*” Subsection (c) permits joinder of “any person who properly files a petition under section 311.” Whether a petition is “properly file[d]” within the meaning of 35 U.S.C. § 311 is thus determined by whether that petition meets the requirements of

# 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.