

Filed on behalf of Patent Owner Network-1 Security Solutions, Inc.

By: Charles F. Wieland III, Esq.
BUCHANAN INGERSOLL & ROONEY PC
1737 King Street, Suite 500
Alexandria, Virginia 22314-2727
Telephone (703) 836-6620
Facsimile (703) 836-2021
charles.wieland@bipc.com

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 IPR2013-00385
Patent 6,218,930

Administrative Patent Judges Jameson Lee, Joni Y. Chang and Justin T. Arbes

**PATENT OWNER'S PRELIMINARY RESPONSE TO THE PETITION
FOR *INTER PARTES* REVIEW FOR U.S. PATENT NO. 6,218,930
PURSUANT TO 35 U.S.C. § 313 AND 37 C.F.R. § 42.107**

Table of Contents

I.	Dell’s Petition should be denied because it is time-barred.....	1
A.	Dell’s Petition is time-barred because it was filed more than one year after Dell was served with a complaint	1
B.	The exception in Section 315(b) does not apply because it permits late-filed requests for <i>joinder</i> , not late-filed petitions.....	2
II.	Dell’s Petition fails to meet the minimum required threshold because Dell does not demonstrate a reasonable likelihood of prevailing as to any challenged claim	8
A.	The ‘930 Patent.....	8
B.	<u>Ground 1</u> : The Challenged Claims are not anticipated by Matsuno..	11
1.	Overview of Matsuno	12
2.	Matsuno does not disclose the claimed “low level current” and step [b] of Claim 6	13
a.	<u>Reason 1</u> : The current disclosed in Matsuno is sufficient to operate the access device.....	13
b.	<u>Reason 2</u> : The current disclosed in Matsuno is not below a threshold that will not damage a device that is not capable of accepting remote power.....	19
i.	The claimed “low level current” must be below a threshold level such that it would not damage a device that is not capable of accepting remote power via the data signaling pair.....	19

ii.	Matsuno does not disclose or teach that the current generated from the 48 volts is below a threshold level such that it would not damage an access device that is not capable of accepting remote power via the data signaling pair.....	25
3.	Matsuno does not disclose the claimed “sensing a voltage level on the data signaling pair.”	26
a.	The construction of “sensing a voltage level <u>on</u> the data signaling pair.”	28
b.	Matsuno does not disclose “sensing a voltage level <u>on</u> the data signaling pair.”	35
4.	Matsuno does not disclose Claim 9	40
D.	<u>Ground 2</u> : The Challenged Claims are not obvious over De Nicolo in view of Matsuno.....	49
E.	<u>Ground 3</u> : Dell’s third ground was already rejected by the Board twice and has now been withdrawn by Dell.....	50
V.	Conclusion	51

The Patent Owner Network-1 respectfully requests that the Board deny Dell's Petition for *Inter Partes* Review filed against Network-1's 6,218,930 Patent for two reasons.¹ Reason 1: Dell's Petition is time-barred. Reason 2: None of the three grounds in Dell's Petition satisfy the minimum threshold required to initiate this IPR.

I. Dell's Petition should be denied because it is time-barred.

A. Dell's Petition is time-barred because it was filed more than one year after Dell was served with a complaint.

The controlling statute provides:

An *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 is served with a complaint alleging infringement of the patent.

35 U.S.C. § 315(b). Dell was served with a complaint on December 14, 2011. N1-2001. Dell filed this petition on June 24, 2013, more than 18 months after Dell

¹ Although Dell's Petition tracks Avaya's Petition in IPR2013-0071 ("the Avaya IPR") and Network-1 previously submitted a Preliminary Response to Avaya's Petition, Network-1 has a statutory right to file this Preliminary Response and additional arguments are presented. *See* 35 U.S.C. § 313 ("If an *inter partes* review petition is filed ... the patent owner shall have the right to file a preliminary response.") (emphasis added).

was served (and more than six months after the statutory deadline). Accordingly, Dell's petition is time-barred and should be rejected.

B. The exception in Section 315(b) does not apply because it permits late-filed requests for *joinder*, not late-filed petitions.

Section 315(b) provides the following exception: “The time limitation set forth in the preceding sentence shall not apply to a request for joinder under subsection (c).” 35 U.S.C. § 315(b) (emphasis added). There are two competing readings of this exception:

Reading 1: This exception permits a party to request joining another IPR after the one-year statutory bar if all of the other statutory requirements, including filing a petition before the statutory bar, are satisfied.

Reading 2: This exception permits a party to end around the one-year statutory bar for filing a petition as long as the party files a motion for joinder.

There are four reasons why Reading 1 is correct and Reading 2 is incorrect.

First, the statutory language demonstrates, and the legislative history confirms, that Reading 1 is correct. “Absent a clear indication of legislative intent to the contrary, the statutory language controls its construction.” *Ford Motor Credit Co. v. Cenance*, 452 U.S. 155, 158 n.3 (1981). Here, the language of the statute demonstrates that Reading 1 is correct because it applies “to a request for

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.