

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL INC., HEWLETT-PACKARD COMPANY, and NETAPP, INC.
Petitioners

v.

ELECTRONICS AND TELECOMMUNICATIONS RESEARCH
INSTITUTE
Patent Owner

Case IPR2013-00635
Patent 6,978,346 B2

Before BRIAN J. McNAMARA, MIRIAM L. QUINN, and
GREGG I. ANDERSON, Administrative Patent Judges.

ANDERSON, Administrative Patent Judge.

ORDER
Conduct of the Proceedings
37 C.F.R. § 42.5

A conference call in the above proceeding was held on December 19, 2013, between respective counsel for Petitioner and Patent Owner, and Judges McNamara, Quinn, and Anderson. Patent Owner sought the conference to request an extension to the deadline for its Preliminary Response to the Petition to Institute *Inter Partes* Review. The Preliminary Response is due January 2, 2014. In particular, Patent Owner requested an extension of time until February 22, 2014, to coincide with the due date of the Patent Owner Preliminary Response in a related petition for *inter partes* review, Case IPR2014-00152 (the “152 case”). According to Patent Owner, the Petition in the 152 case seeks *inter partes* review of the same patent as the present case and was filed by the same Petitioners. Patent Owner argued it wanted extra time to develop the redundancy of the prior art in the related proceeding and that there would be efficiencies by having the preliminary responses due on the same date. For instance, Patent Owner argued that the extension of time in the present case could result in the two related proceedings having the same schedule.

Petitioner opposed Patent Owner’s request. In support of its opposition, Petitioner argued that the asserted grounds in the 152 case rely on different prior art than in the present case, and that there is no overlap of grounds on which *inter partes* review is sought.

The Board explained that because the asserted grounds and prior art differ between the two proceedings, an extension of Patent Owner’s deadline to file the Preliminary Response is not warranted at this time. Further, whether there could be a common schedule in the 152 case and the present case is speculative as the Board has not determined whether trial will be instituted in either case.

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It is

ORDERED that Patent Owner's request for an extension to file the Preliminary Response is denied; and

FURTHER ORDERED that the deadline to file the Preliminary Response in this case remains January 2, 2013.

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