

Paper No. _____

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
Petitioner,

v.

OPENTV, INC.,
Patent Owner.

Case IPR2014-00274
Patent 6,018,768

PETITIONER'S REQUEST FOR REFUND OF POST-INSTITUTION FEE

Petitioner hereby files its request for a refund of the \$16,000 post-institution fee that was previously paid.

On December 19, 2013, Petitioner Netflix, Inc. filed a petition for *inter partes* review of U.S. Patent No. 6,018,768 and paid the USPTO a total of \$25,000, which included a \$9,000 payment for the *inter partes* review request fee and a \$16,000 payment for the post-institution fee (\$14,000, plus \$400 per claim in excess of 15).

The petition was granted a filing date of December 19, 2013. (Paper No. 3). On June 30, 2014, the Board entered a Decision – Denying *Inter Partes* Review (Paper No. 12) in which the Board denied institution of the requested *inter partes* review. The Board subsequently entered a Decision on Rehearing (Paper No. 14), in which the Board declined to modify the previous decision to deny institution. Accordingly, the *inter partes* review was never instituted.

Therefore, because the petition to institute *inter partes* review was filed after March 19, 2013, and the proceeding did not institute, Petitioner Netflix, Inc. is entitled to request a refund of the post-institution fee that was previously paid. *See e.g.*, 78 FR 4233 (January 18, 2013) available at <http://www.gpo.gov/fdsys/pkg/FR-2013-01-18/pdf/2013-00819.pdf> (“The entire post-institution fee would be returned to the petitioner if the Office does not institute a review.”).

Petitioner Netflix, Inc. hereby requests a refund of the \$16,000 post-institution fee previously paid by Netflix, Inc. The refund may be deposited in Deposit Account No. 08-1394 of Haynes and Boone, LLP under attorney reference number 50796.4.

Respectfully submitted,

Date: September 24, 2014

/Andrew S. Ehmke/

Lead Counsel For Petitioner
Andrew S. Ehmke
Registration No. 50,271

HAYNES AND BOONE, LLP
Customer No. 27683
Telephone: 214/651-5116
Facsimile: 214/200-0853
Attorney Docket No.: 50796.4

CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.105, that service was made on the Patent Owner as detailed below.

Date of service September 24, 2014

Manner of service Electronic Mail

Document served Petitioner's Request for Refund of Post-Institution Fee

Persons served Erika H. Arner (erika.arner@finnegan.com)
Joshua L. Goldberg (joshua.goldberg@finnegan.com)
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
11955 Freedom Drive
Reston, VA, 20190

Russell E. Levine (russell.levine@kirkland.com)
Eugene Goryunov (eugene.goryunov@kirkland.com)
James B. Medek (james.medek@kirkland.com)
Kirkland and Ellis, LLP
300 North LaSalle
Suite 2400
Chicago, IL 60654

/Andrew S. Ehmke/

Andrew S. Ehmke

Lead Counsel for Petitioner
Registration No. 50,271