

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WAVEMARKET, INC. D/B/A LOCATION LABS
Petitioner

v.

CALLWAVE COMMUNICATIONS, LLC
Patent Owner

Case IPR2014-00920
Patent 6,771,970

Petitioner's Opposition to Patent Owner's Motion for Additional Discovery

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("Motion") should be denied because Patent Owner ("PO") has not met its burden as the movant to demonstrate that the requested discovery is in the interest of justice. PO fails to offer any evidence, beyond mere speculation, that any of the requested discovery could be useful to prove that the carriers (AT&T, Sprint and T-Mobile) are privies of Petitioner. PO's deliberate delay in seeking discovery on the issue of privity also weighs against granting the Motion.

I. FACTUAL BACKGROUND

In December 2012, PO filed a number of lawsuits in District Court alleging, *inter alia*, infringement of US 6,771,970 ("the '970 patent") ("Litigation"). The pending litigation names, *inter alia*, AT&T, T-Mobile and Sprint as defendants ("Defendants"). To date, the Petitioner (Wavemarket d/b/a Location Labs, Inc.) has not been named as a defendant or served with a complaint for infringement in connection with the '970 patent. The Petition in this case identifies the real party-in-interest, Location Labs, Inc., and affirmatively states on the record that "no party exercised control or could exercise control over Location Labs' participation in this proceeding, the filing of this petition, or the conduct of any ensuing trial." PO does not contest that Location Labs is the real party-in-interest. Instead, PO alleges that the Petition is time-barred under 35 U.S.C. § 315(b) because privies of the Petitioner were served with a complaint for infringement of the '970 Patent

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