UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SkyHawke Technologies, LLC
Petitioner

v.

L&H Concepts, LLC
Patent Owner

Case IPR2014-01485
Patent 5,779,566

PATENT OWNER'S RESPONSE TO MOTION FOR JOINDER

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Pursuant to 37 C.F.R. § 42.23(a), the patent owner, L&H Concepts, LLC ("L&H" or "Patent Owner"), hereby submits the following Opposition in response to the Petitioner's motion for joinder ("SkyHawke's Motion") of the concurrently filed petition, *SkyHawke Technologies, LLC v. L&H Concepts, LLC,* Case No. IPR2014 01485 ("the 1485 Petition"), for *inter partes* review of claims 6, 15, and 16 of U.S. Patent No. 5,779,566 ("the '566 patent") with the instituted *inter partes* review styled *SkyHawke Technologies, LLC v. L&H Concepts, LLC,* Case No. IPR2014-00438 concerning the same patent ("the 438 Petition").

Patent Owner respectfully requests that this Board deny SkyHawke's Motion. For the reasons set forth below, Patent Owner considers the 1485 Petition and motion for joinder to be unnecessary and inappropriate.

I. MATERIAL FACTS IN DISPUTE

With regard to the Statement of Material Facts presented by SkyHawke (*see* SkyHawke's Motion, Pages 1-4), L&H disputes the characterization of the previously challenged claims as "materially identical" to the newly challenged claims 6, 15, and 16. *See* SkyHawke's Motion, Page 4. Additionally, SkyHawke's statement of material facts claims that no initial status conference was held in the Southern District of Mississippi. In fact, the parties did confer with Magistrate Judge Anderson on May 14, 2014. Though the conference was continued for further discussion at a later date, its commencement served to reopen discovery, allowing

L&H to amend its interrogatory responses to identify additional claims of the '566 patent which L&H had recently determined to be infringed.

II. L&H ASSERTS THAT JOINDER IS INAPPROPRIATE AND SHOULD BE DENIED.

While joinder may be appropriate in some cases, the facts of this case strongly indicate that joinder is not appropriate here. *See Sony Corp. and Hewlett-Packard Co. v. Network-1 Security Solutions, Inc.*, IPR2013-00495 (September 16, 2013), Paper 13 at 8 (clarifying that joinder is not automatic, and "the fact that joinder is permitted in one case under one set of facts does not mean it will be allowed in another case under a different set of facts."). First, L&H will be required to expend considerable additional costs and suffer unilateral prejudice if the concurrently filed petition for *inter partes* review is joined with the 438 IPR. Second, SkyHawke will not suffer undue prejudice if the concurrently filed petition for *inter partes* review is not joined to the 438 IPR. Finally, the Board should deny joinder as a matter of public policy and take a position that advocates the filing of procedurally efficient and concise petitions. Granting joinder in this instance will encourage future Petitioners to withhold claim validity challenges opportunistically, only to raise them in a procedurally disruptive manner.

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