

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SIRIUS XM RADIO INC.,  
Petitioner,

v.

DRAGON INTELLECTUAL PROPERTY, LLC,  
Patent Owner.

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Case IPR2015-01735  
Patent 5,930,444

Before KAREN I. SWEENEY, *Trial Paralegal*.

**PATENT OWNER'S PARTIAL OPPOSITION TO  
PETITIONER'S MOTION FOR JOINDER**

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Patent Owner Dragon Intellectual Property, LLC (“Dragon” or “Patent Owner”) submits this partial opposition to Petitioner Sirius XM Radio Inc.’s (“Sirius” or “Petitioner”) motion to join the petition it filed on August 14, 2015 to a currently pending proceeding initiated by DISH Network L.L.C. (“DISH”). Patent Owner submits this opposition early because of the representation made by Sirius that the motion for joinder is unopposed. That is not the case, and Patent Owner respectfully submits this partial opposition. The petition Sirius filed on August 14, 2015, more than eighteen months after it was served with a complaint alleging infringement of the patent it now seeks to challenge, seeks to add new evidence to the DISH proceeding that is not relevant to any ground of invalidity that has been instituted by the Board. Sirius’s effort to join the proceeding in a manner that introduces new evidence to the existing proceeding should be denied on that ground alone.

Sirius’s effort to introduce new evidence and issues through a joinder motion also should be rejected because more than a year has elapsed since Sirius was served with a complaint for infringement of the patent at issue. Sirius did not bring a challenge of its own within the one year statutory time period, and Sirius is time barred from bringing new challenges to the patent on which it was sued more than one year ago. The new evidence Sirius seeks to introduce also was available to DISH at the time DISH filed its petition, and the only reason Sirius seeks to add it

now is to fix perceived problems with the evidence DISH did include in its petition. Moreover, Sirius waited until the last possible moment to seek to inject new issues into the DISH IPR, filing its joinder petition on the final day. To allow Sirius to introduce new evidence now to an ongoing proceeding would be unfairly prejudicial to Patent Owner, and would be highly disruptive to the schedule set by the Board in the DISH IPR. There is no justification for joining Sirius’s petition with the DISH petition in a way that includes new evidence.<sup>1</sup>

## I. PROCEDURAL BACKGROUND

As Sirius notes in its Petition, Patent Owner sued Sirius and DISH for infringement of U.S. Patent No. 5,930,444 (“’444 patent”) in December 2013. *Dragon Intellectual Property, LLC v. Sirius XM Radio Inc.*, Civil Action No. 1:13-cv-02067-RGA (D. Del), D.I. 1 (“Complaint for Patent Infringement”). Sirius was served with the complaint on or about December 26, 2013. *Id.*, D.I. 4 (“Summons and Proof of Service”). Under 35 U.S.C. § 315(b), the time for Sirius to file a petition for *inter partes* review of the ’444 Patent expired on or about December

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<sup>1</sup> Patent Owner is not aware of instances in which a motion to join has been “granted-in-part and denied-in-part.” Patent Owner does not object to Sirius joining the DISH proceeding to the extent that Sirius’s petition is based on the record existing in the DISH petition. If Sirius’s motion to join is only amenable to complete granting or denial (rather than granting or denial-in-part), the joinder request should be denied.

26, 2014. Sirius did not to file a petition for *inter partes* review within the one year window.

DISH, however, did file a petition for *inter partes* review within the one year statutory period. See *DISH Network L.L.C. v. Dragon Intellectual Property, LLC*, IPR2015-00499 (the “DISH IPR”), Paper 1. DISH asserted ten proposed grounds of invalidity. *Id.* Patent Owner filed its preliminary response to the DISH Petition on April 23, 2015. *Id.*, Paper 6. The Board instituted *inter partes* review of the ’444 Patent on two grounds asserted in the DISH Petition. *Id.*, (“Institution Decision”), Paper 7 at \*20. As is particularly relevant here, the Board declined to institute review on asserted grounds 1-7 on the basis that DISH had not established that the asserted prior art, “Truog,” qualified as a printed publication. *Id.* at \*10-11; see also *Apple Inc. v. DSS Technology Management, Inc.*, IPR2015-00369, Paper 14 (citing with approval the Institution Decision).

As recorded in a stipulated Order in the District Court proceeding, while the DISH Petition was pending, Sirius sought Patent Owner’s agreement to a stay of the District Court proceedings. The stay Sirius requested was based on its commitment to seek to join the DISH proceeding “[i]f and when the PTAB institutes the DISH IPR.” *Dragon Intellectual Property, LLC, v. Sirius XM Radio Inc.*, Civil Action No. 1:13-cv-02067-RGA (D. Del), D.I. 102 at 2 (“Stipulated Order to Stay Litigation Pending *Inter Partes* Review”) (attached to this

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