

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PLAID TECHNOLOGIES, INC.,
Petitioner,

v.

YODLEE, INC. and YODLEE.COM, INC.,
Patent Owner.

Case IPR2016-00275
Patent 6,199,077 B1

Before SALLY C. MEDLEY, MICHAEL R. ZECHER, and
JOHN A. HUDALLA, *Administrative Patent Judges*.

HUDALLA, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review
35 U.S.C. § 314(a) and 37 C.F.R. § 42.108

Denying Motion to Change Filing Date
37 C.F.R. § 42.5 and 37 C.F.R. § 42.104(c)

Petitioner, Plaid Technologies, Inc. (“Plaid”), filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–12 of U.S. Patent No. 6,199,077 B1 (“the ’077 patent,” Ex. 1001) pursuant to 35 U.S.C. §§ 311–19. Patent Owner, Yodlee, Inc. and Yodlee.com, Inc. (“Yodlee”),

filed a Preliminary Response. Paper 11 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314.

Plaid’s Petition was accorded a filing date of December 3, 2015. Paper 3, 1. Subsequently, we authorized Plaid to file a motion to change the filing date accorded to the Petition from December 3, 2015, to December 2, 2015. Paper 8. Plaid filed its motion to change the filing date of the Petition. Paper 9 (“Mot.”). Yodlee filed an opposition to the motion. Paper 10 (“Opp.”). Plaid filed a reply in support of its motion. Paper 13 (“Reply”).

For the reasons set forth below, we determine that Plaid did not serve timely the Petition in accordance with 37 C.F.R. § 42.106(a)(2) within the one-year period set forth in 35 U.S.C. § 315(b). We also determine that Plaid does not show good cause for us to waive the service requirement as a prerequisite for according a filing date, or otherwise to excuse Plaid’s late action. We additionally determine Plaid failed to file a complete petition in accordance with 37 C.F.R. §§ 42.104(b)(1–5), 42.106(a)(1) within the statutory period of 35 U.S.C. § 315(b), and that this failure did not constitute a clerical mistake under 37 C.F.R. § 42.104(c). Accordingly, we deny Plaid’s motion to change the filing date accorded to the Petition, and we do not institute *inter partes* review of the ’077 patent.

I. BACKGROUND

A. *Related Proceedings*

Both parties identify the following proceeding related to the ’077 patent (Pet. 1–2; Paper 7, 2): *Yodlee, Inc. v. Plaid Technologies, Inc.*, Case No. 1:14-cv-01445-LPS-CJB (D. Del.) (filed Dec. 1, 2014). Plaid was

served with the complaint in this case on December 2, 2014. *See* Pet. 2 (citing Ex. 1002).

Plaid also has filed a petition requesting a review of claims 1–12 of the '077 patent under the transitional program for covered business method patents in Case CBM2016-00037. In addition, Plaid filed another petition for *inter partes* review of U.S. Patent No. 6,317,783 B1, which also is owned by Yodlee, in co-pending Case IPR2016-00273. *See* Pet. 2.

B. Factual Background Related to Filing

Before it began filing two petitions for *inter partes* review on the evening of December 2, 2015, Plaid allegedly waited for supporting declarations from Todd C. Mowry, Ph.D., “in case he had any changes that would need to be reflected in the other petition papers.” Mot. 4 (citing Ex. 1021 ¶ 4; Ex. 1022 ¶ 4). At around 10:30 p.m., when Dr. Mowry’s signed declarations were received, Plaid’s counsel began filing sequentially the two petitions.¹ *Id.* at 1–2, 4 (citing Ex. 1021 ¶¶ 2, 4; Ex. 1022 ¶¶ 2, 4). Plaid’s counsel finished filing the first Petition, which pertained to co-pending Case IPR2016-00273, by clicking “Submit” at around 11:40 p.m. *Id.* at 2 (citing Ex. 1021 ¶ 7; Ex. 1022 ¶ 5). Plaid’s counsel then attempted to start filing the Petition in the instant case, but counsel asserts that the Patent Review Processing System (“PRPS”) system “froze” before any papers could be uploaded. *Id.* at 2–3 (citing Ex. 1021 ¶¶ 9–10; Ex. 1022 ¶ 6). This attempt at filing was aborted. *Id.* at 3 (citing Ex. 1021 ¶ 10).

¹ Plaid believed it had to file sequentially the two petitions because they were signed by the same counsel. Mot. 4 (citing Ex. 1021 ¶ 6; Ex. 1022 ¶ 4). We are not aware of any such requirement.

At around 11:45 p.m., Plaid’s counsel began a second attempt to file the Petition in the instant case on a different computer. *Id.* (citing Ex. 1021 ¶ 12; Ex. 1022 ¶ 8). Before midnight, Plaid’s counsel “managed to enter the identifying information for the [Petition in the instant case], along with party information, upload the [P]etition, pay the fee and upload some of the exhibits.” *Id.* (citing Ex. 1021 ¶ 12; Ex. 1022 ¶ 8). Still, Plaid’s counsel did not complete uploading of the remaining exhibits and clicking “Submit” until the early morning of December 3, 2015. *Id.* at 3–4 (citing Ex. 1021 ¶ 13; Ex. 1022 ¶ 8).

After filing had been completed on December 3, 2015, the Petition and supporting evidence were deposited with FedEx for next-day delivery to Yodlee. Ex. 1022 ¶ 9. Tracking information provided by Plaid shows these papers were not picked up by FedEx until the evening of December 3, 2015, and not delivered to Yodlee until the morning of December 4, 2015. Ex. 1024. Notwithstanding, the Certificate of Service for the Petition indicates service was effected on December 2, 2015. *See* Pet. 61.

II. ANALYSIS

Section 315(b) of Title 35 of the United States Code states that “[a]n inter partes review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner . . . is served with a complaint alleging infringement of the patent.” Given that the complaint in the underlying district court case was served on December 2, 2014, *see* Pet. 2 (citing Ex. 1002), the one-year deadline in this case under § 315(b) was December 2, 2015.

The requirements for a petition are set forth in 35 U.S.C. § 312(a). This section specifies that “[a] petition filed under section 311 may be considered only if” the enumerated requirements are met. 35 U.S.C. § 312(a). Among the requirements germane to this case is “evidence that supports the grounds for the challenge to each claim, including . . . copies of patents and printed publications that the petitioner relies upon in support of the petition; and . . . affidavits or declarations of supporting evidence and opinions.” 35 U.S.C. § 312(a)(3)(B). These requirements are reflected in a corresponding regulation, 37 C.F.R. § 42.104, which specifies the required content of a petition. Notably, § 42.104 includes a provision that states “[a] motion may be filed that seeks to correct a clerical or typographical mistake in the petition. The grant of such a motion does not change the filing date of the petition.” 37 C.F.R. § 42.104(c).

Section 312(a)(5) of Title 35 of the United States Code also states that the petitioner must “provide[] copies of any of the documents” required under the same section “to the patent owner” in order for a petition to be considered. *Id.* The corresponding regulation states that “[t]he petition and supporting evidence must be served on the patent owner at the correspondence address of record for the subject patent.” 37 C.F.R. § 42.105(a).

Furthermore, 37 C.F.R. § 42.106(a) enumerates the requirements for obtaining a filing date in an *inter partes* review. This section states that a “[c]omplete petition” that complies with 37 C.F.R. § 42.104 is required in order for a filing date to be accorded. 37 C.F.R. § 42.106(a)(1). In addition, a petitioner must “[e]ffect service of the petition” on a patent owner in

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