

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

D-Link Systems, Inc.,

Petitioner,

v.

Chrimar Systems, Inc.

Patent owner,

Case: IPR2016-01426

U.S. Patent No. 9,019,838

**PETITIONER'S REPLY TO PATENT OWNER PRELIMINARY
RESPONSES REGARDING ARGUMENTS
ON REAL PARTY-IN-INTEREST**

D-Link Systems, Inc. is the only entity that funds or directs or has *any* control over this proceeding or the co-pending litigation between the parties before the Eastern District of Texas. Patent Owner (“PO”) itself chose to name D-Link Systems, Inc. as the sole Defendant in the co-pending EDTX litigation. See, for example, Exh. 2047.

I. THE PETITION CORRECTLY IDENTIFIES D-LINK SYSTEMS, INC. AS THE SOLE REAL PARTY IN INTEREST

Without any actual proof, PO asserts that D-Link Corp, an overseas, legally separate corporation of being an RPI simply because D-Link System is a subsidiary of D-Link Corp. (POPR, 1 & 19.) However, as the overseas parent has no actual control over this proceeding, PO seeks to find support for its arguments by making misleading statements and drawing flawed conclusions.

a. PO Misconstrues Legally Required Financial Statements

POPR cites heavily to D-Link Corp.’s consolidated financial statements. D-Link Corporation is a publicly held company in Taiwan (the Republic of China). As shown in the very document that PO cites, Taiwanese security law requires that a company list financial investment information and risks (including law suits) *for every subsidiary company*. See, for example, Exh. 2038-14 (“entities that are required to be included in the combined financial statements...under [certain Taiwanese Security Regulatory rules] are the same as those included...in conformity with [certain accounting standards].”)

As PO even acknowledges at footnote 25, D-Link Corporation “was required to include” cases against Petitioner in its consolidated financial statement. It is a simple security documentation requirement that has nothing to do with control or direction of any of the suits. Beyond this, contrary to PO’s assertion, even if a Petitioner and an affiliate were to share counsel in the co-pending litigation (which is not even the case here), even that shared counsel does not establish the affiliate’s ability to control Petitioner’s conduct in this proceeding. *Syntroleum Corp. v. Neste Oil Oyj*, Case IPR2013- 00178, Paper 22 at 7 (Sept. 4, 2014).

Beyond all this, while not mentioned by PO, the D-Link Corp.’s Annual Report shows the Petitioner is not even a wholly owned subsidiary. The Board has found that even where an annual report stated that a parent company “conduct[s] substantially all of [its] operations through subsidiaries,” it is not legally sufficient to establish the patent “control[s] *all aspects* of Petitioner’s business, *including controlling [] inter partes review*” (italic in original). *TRW Automotive US LLC v. Magna Electronics Inc.*, Case IPR2014-01497, Paper 7 at 8-9 (Mar. 19, 2015).

b. Factual Errors in PO’s “Products At Issue” Arguments

D-Link Systems does not purchase its products from D-Link Corporation. PO is simply wrong about this. PO has further never asserted U.S. Patent No. 9,019,838 against D-Link Corp. or D-Link Corp.’s products. In fact, PO has never sued D-Link Corp. for patent infringement - mostly likely because D-Link Corp.

does not sell any products in the United States. D-Link Corp. is simply not at issue here – belying PO’s misleading statements about it.

II. CONCLUSION

Patent Owner must sufficiently demonstrate with evidence that a parent controls a subsidiary’s participation in the *inter partes* review. Here, the arguments set forth in the POPR are all based on misconstruing or misstating either documents or business practices. These flawed arguments cannot establish that D-Link Corp controls or directs this IPR – because it factually does not.

Date: November 10, 2016

Respectfully submitted,

/s/Victoria Hao
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CERTIFICATION OF SERVICE

The undersigned hereby certifies that the foregoing Reply is being served via electronic mail (e-mail) to Patent Owner counsels of record (Chrimar@tklaw.com).

Date: November 10, 2016

/Victoria Hao, Reg. No. 47,630/