

Paper No. 6  
Filed: February 28, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MICROSOFT CORPORATION  
Petitioner

v.

PROXYCONN, INC.  
Patent Owner

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Case IPR2017-00261  
Patent 6,757,717

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**PATENT OWNER'S PRELIMINARY RESPONSE  
TO PETITION FOR *INTER PARTES* REVIEW  
[NON-CONFIDENTIAL VERSION]**

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## EXHIBITS

<b>Exhibit No.</b>	<b>Description</b>
Exhibit 2001	Proof of Service of Complaint in Case No. SACV11-1681 upon Microsoft Corporation
Exhibit 2002	Joint Stipulation Requesting Stay of Case Pending Inter Partes Review, filed Nov. 2, 2012 in Case No. SACV11-1681
Exhibit 2003	Joint Request for a Status Conference and Report, filed Jan. 8, 2013 in Case No. SACV11-1681
Exhibit 2004	Order Granting Defendants' Motion to Dismiss, dated May 16, 2012 in Case No. SACV11-1681
Confidential Exhibit 2005	Tolling Agreement, dated January 22, 2013

## I. INTRODUCTION

More than five years passed between when Microsoft was first served with a complaint alleging infringement of the '717 Patent and when Microsoft filed the Petition in this action. During those five years, Microsoft filed two previous IPR Petitions, which were combined and fully prosecuted through institution, trial, final written decision, appeal, and remand. As those IPR proceedings played out, the parties agreed to put their district court litigation on hold, pursuant to a Tolling Agreement. Once the IPR proceedings were complete, the district court litigation resumed, as the parties had contemplated.

Now, Microsoft seeks to return to the IPR well for a third time, increasing the costs of litigation to Proxyconn and potentially further delaying a final resolution that has already been delayed long enough. This untimely Petition is barred by 35 U.S.C. § 315(b), and it should be denied institution on that basis. As Congress dictated in crafting the statute governing IPRs, the time for bringing IPRs challenging a patent is limited to one year after a litigation is filed. After the expiration of that time, the issues that remain must be decided in district court.

Even if the Petition were not barred by § 315(b), it should be denied with respect to at least grounds 3 and 4, because Microsoft has failed to establish a reasonable likelihood of prevailing on these grounds.<sup>1</sup>

## II. BACKGROUND

### A. The '717 Patent.

As explained in further detail below, the '717 Patent has been extensively considered by the Board and by the Federal Circuit. The Board has provided a summary of the patent (Ex. 1008 at 3-7), as has the Federal Circuit (Ex. 1010 at 3-

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<sup>1</sup> While Proxyconn does not address grounds 1 and 2 in this preliminary response, it reserves the right to do so at trial, should the Board institute a proceeding on either ground.

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