

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIPTELA, INC.,
Petitioner,

v.

FATPIPE NETWORKS PRIVATE LIMITED,
Patent Owner.

Case IPR2017-00684
Patent 6,775,235 B2

Before STACEY G. WHITE, MICHELLE N. WORMMEESTER, and
CHRISTA P. ZADO, *Administrative Patent Judges*.

CHRISTA P. ZADO, *Administrative Patent Judge*.

ORDER

Conduct of the Proceeding
37 C.F.R. § 42.5

In our Decision on Institution, we determined that Petitioner demonstrated a reasonable likelihood that it would establish that at least one of the challenged claims of U.S. Patent No. 6,775,235 B2 is unpatentable. Paper 8, 3, 18–19. However, we did not institute as to all challenged claims and all grounds presented in the Petition. *Id.* at 19; Paper 1 (Petition). As a result of our not instituting on all challenged claims, Petitioner requested, and on November 11, 2017, was granted, a refund of \$400.00 in post-institution fees. Paper 19; Paper 20.

On April 24, 2018, the Supreme Court held that a decision to institute under 35 U.S.C. § 314 may not institute on less than all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 2018 WL 1914661, at *10 (U.S. Apr. 24, 2018). On May 9, 2018, we modified our institution decision to include review of all the challenged claims and all the grounds presented in the Petition, and ordered the parties to confer regarding the impact of SAS on this proceeding. Paper 26.

Conference calls were held on May 18, 2018 and May 22, 2018 between counsel for each party and Judges White, Wormmeester, and Zado to discuss the impact of SAS on this proceeding. During these calls, we discussed the possibility of terminating the portion of this case relating to the newly instituted claims and grounds, but the parties were not able to come to an agreement.

On May 31, 2018, the Chief Administrative Patent Judge extended the one-year period to issue a final determination in this proceeding upon a showing of good cause, and we entered an order extending the one-year pendency. Paper 28; Paper 29. In addition, we entered an order authorizing

supplemental briefing and a supplemental hearing. Paper 30.

The institution of the newly instituted claims impacts the refund approval entered on November 11, 2017. In accordance with the rules and regulations setting forth fees, we require Petitioner to repay the refunded post-institution fee in the amount of \$400.00. The due date to repay this fee is five (5) business days from the date of this Order. Given the requirement that we may not institute on less than all claims challenged in the Petition, **if repayment of the refunded post-institution fee is not timely made, the Board shall terminate this proceeding in its entirety.**

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner is required to repay the refunded post-institution fee in the amount of \$400.00;

FURTHER ORDERED that repayment of the refunded post-institution fee is due no later than five (5) business days from the date of this Order; and

FURTHER ORDERED that if repayment of the post-institution fee is not timely made, this proceeding shall be terminated in its entirety.

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Patent 6,775,235 B2

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