

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

TWITTER, INC.,  
Petitioner,

v.

YOUTOO TECHNOLOGIES, LLC,  
Patent Owner.

---

Case IPR2017-01133  
Patent 8,601,506

---

**TWITTER, INC.'S OPPOSITION  
TO PATENT OWNER'S MOTION FOR STAY**

**TABLE OF CONTENTS**

	Page(s)
I. INTRODUCTION .....	1
II. THE BOARD SHOULD DENY THE MOTION FOR STAY .....	1
A. <i>Inter Partes</i> Review Proceedings Are Excluded From The Automatic Stay Under 11 U.S.C. § 362(b)(4).....	1
1. IPRs Are Proceedings By A Governmental Unit .....	2
2. The Primary Purpose Of An Inter Partes Review Is To Protect The Public Welfare, Not Adjudicate Private Rights .....	4
B. If The Board Intends To Stay The Proceeding, Youtoo Should Not Be Permitted To File A Patent Owner Response After January 3, 2018 .....	9
III. CONCLUSION.....	12

**LIST OF PREVIOUSLY FILED EXHIBITS**

**Exhibits 1001-1017:** Filed and served March 24, 2017 with Twitter's Petition for *Inter Partes* Review of U.S. Patent No. 8,601,506.

**Exhibit 1018:** Filed and served October 18, 2017 with Twitter's Unopposed Motion for *Pro Hac Vice* of Robert T. Cruzen.

## I. INTRODUCTION

Petitioner Twitter, Inc. (“Petitioner”) hereby submits the following opposition to Youtoo Technologies, LLC’s Motion for Stay (Paper 18). This proceeding should not be stayed, because the stay provisions of 11 U.S.C. § 362(a) do not apply to this proceeding. This instituted *inter partes* review is a continuation of an action by the government to enforce the government’s regulatory power, and thus, this proceeding is exempt from stay under the explicit exception of 11 U.S.C. § 362(b)(4). Even if the Board believes a stay is appropriate, Youtoo’s strategic use of its bankruptcy filing as a pretext to seeking yet further delays and modification of the Scheduling Order should not be condoned, and the PTAB should deem Youtoo to have waived its opportunity to file a patent owner response if not filed by the current deadline.

As explained more fully below, the Board should not stay this proceeding.

## II. THE BOARD SHOULD DENY THE MOTION FOR STAY

### A. *Inter Partes* Review Proceedings Are Excluded From The Automatic Stay Under 11 U.S.C. § 362(b)(4)

Bankruptcy Code § 362(b)(4) provides in pertinent part that the filing of a petition under the Bankruptcy Code does not operate as a stay of:

[T]he commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit’s . . . regulatory power, including the enforcement of a judgment other than a money judgment

TWITTER’S OPPOSITION TO

obtained in an action or proceeding by the governmental unit to enforce such governmental unit's . . . regulatory power.”

11 U.S.C. § 362(b)(4).

This exception to the bankruptcy automatic stay applies where a proceeding (i) is brought or continued by a governmental unit and (ii) seeks to vindicate the public interest, as opposed to the private rights of a third-party. *See, e.g., I.T.C. v. Jaffe*, 433 B.R. 538, 543 (E.D. Va. 2010). Here, the instant inter partes review satisfies both of the requirements of 11 U.S.C. § 362(b)(4) and is therefore exempt from the automatic stay.

### **1. IPRs Are Proceedings By A Governmental Unit**

First, an instituted IPR is a “continuation of an action...by a governmental unit.” 11 U.S.C. § 362(b)(4). The United States Patent and Trademark Office (“*USPTO*”) and the Patent Trial and Appeal Board are unquestionably governmental units created by Congress. *See* 35 U.S.C. §§ 1, 6.<sup>1</sup> An IPR involves two distinct

---

<sup>1</sup> The Bankruptcy Code defines a “governmental unit” as:

United States; State; Commonwealth; District; Territory; municipality; foreign state; department, *agency, or instrumentality of the United States* (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

11 U.S.C. § 101(27) (emphasis added).

TWITTER’S OPPOSITION TO

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.