UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AT&T SERVICES, INC.,

Petitioner,

v.

CONVERGENT MEDIA SOLUTIONS, LLC,

Patent Owner.

INTER PARTES REVIEW OF U.S. PATENT NO. 8,850,507 B2 Case IPR No.: IPR2017-01235

PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION FOR JOINDER

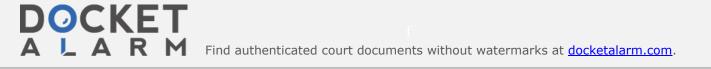


TABLE OF CONTENTS

I. I	ntroduction	1
II.	Status of Related Litigations and Proceedings	2
III.	Arguments and Authorities	4
A.	AT&T cannot contest that they filed this IPR Petition more than one year	
afte	er it was served with a complaint for infringement of the '507 patent	4
B.	Petitioner's Motion for Joinder does not exempt its Petition from the time-	
bar	of §315(b)	5
C.	Other Practical Considerations Weighing Against Institution and Joinder	8

TABLE OF AUTHORITIES

Cases

Statutes and Regulations

35 U.S.C. §311(a)	1
35 U.S.C. §315(b)	passim
35 U.S.C. §315(c)	
37 C.F.R. §42.101(b)	7
37 C.F.R. §42.122(b)	

PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description	
2001	(Nov. 10, 2015).Petitioner AT&T Services, Inc.'s Answer to Patent Owner CMS's	
2002		

I. Introduction

Patent Owner Convergent Media Solutions, LLC ("CMS" or "Patent Owner") files this opposition to Petitioner AT&T Services, Inc.'s ("AT&T" or "Petitioner") Motion for Joinder, Paper 3 ("Motion").

Petitioner's Motion for Joinder should be denied. Petitioner cannot dispute that it filed its petition more than one year after it was served with a complaint for infringement of U.S. Patent 8,850,507 (the "507 patent"). For this reason alone, Petitioner's IPR petition, Paper 1, is defective and the Board should not institute a trial in this case. See 35 U.S.C. §315(b) ("An 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."). Because Petitioner filed a defective petition, joinder would be improper. See 35 U.S.C. §315(c) (authoring joinder only for "any person who properly files a petitioner under section 311 ...") and 35 U.S.C. §311(a) (stating that all petitions are "[s]ubject to the provisions of this chapter," thus including the timeliness requirement of §315(b)). Any prejudice to Petitioner in denying the Motion for Joinder is a product of Petitioner's decision to file its Petition after it was time-barred.

Patent Owner understands that Petitioner's IPR petition is duplicative of the

grounds, evidence, and arguments presented by petitioners Netflix, Inc. and Roku, Inc. in IPR2016-01761 (the "-01761 IPR"), which has been instituted for trial. Patent Owner is aware of previous Board decisions permitting institution of copycat petitions that would otherwise be time-barred when a request for joinder to an instituted trial is filed with the copy-cat petition. Patent Owner respectfully contends that such an outcome is contrary to the statutory mandate of §315(b), and that in doing so the Board exceeds a limitation that Congress placed on the Board's statutory authority and that is plainly expressed in the statute. Despite the prior panel decisions to the contrary, Patent Owner urges this panel to follow the plain language of the statute; and Patent Owner presents its arguments here to preserve the issue for appeal, if necessary.

Additionally, the parties to the proceeding that Petitioner seeks to join have settled their dispute and filed a motion to terminate that proceeding. Patent Owner and Netflix and Roku respectfully believe that the proceeding that AT&T seeks to join should be terminated. On this additional basis, the Motion for Joinder should be denied.

II. Status of Related Litigations and Proceedings

As of this filing, the '507 patent is currently subject to one additional IPR proceeding between Patent Owner and Petitioners Netflix, Inc. and Roku, Inc.,

DOCKET A L A R M



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.