UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.

Petitioner

- vs. -

FALL LINE PATENTS, LLC

Patent Owner

IPR2018-00043

U.S. Patent 9,454,748

PETITIONER'S RPI REPLY

TABLE OF CONTENTS

I. Introduction

In accordance with the Order entered December 21, 2018 (Paper 19), Petitioner Unified Patents Inc. ("Unified") submits this Reply, responsive to Patent Owner Fall Line Patents, LLC's ("Fall Line") arguments presented in its Preliminary Response ("POPR," Paper 5) and accompanying Exhibits, at the oral hearing, and in its Motion filed January 11, 2019 (Paper 20, "Motion") requesting that the Board address its belatedly-presented arguments.

Unified correctly certified itself in the Petition as the sole real party-in-interest ("RPI"), and Unified's certification remains correct under the law as since clarified. No other entity exercised control or could have exercised control over the filing of the Petition or Unified's conduct or participation in this proceeding. Fall Line's generalized, speculative allegations about Unified's business model are similar to previously rejected arguments, were already rejected at institution, and regardless are insufficient to demonstrate Unified's certification was incorrect.

The Board previously found that Fall Line's POPR failed to provide "sufficient evidence to reasonably bring into question the accuracy of Petitioner's [RPI] identification." Institution Decision at 11. Fall Line, citing no new evidence, argued for the first time during trial at the oral hearing (and argues now) that the Board's reasoning was based on the then-applicable "rebuttable presumption," and that the law has since changed. *See, e.g.*, Motion at 3–5, Oral Hearing Transcript (Paper 20) at 20:26–21:5. But nothing compels a change to the Board's conclusion,

which was consistent with intervening decisions. In contrast to Federal Circuit precedent, Fall Line has failed to produce evidence sufficient to place Unified's RPI certification in dispute. The Board should confirm in the final written decision that Unified is the sole RPI in this proceeding.

A. Other Board Panels Have Found Identical Arguments Unpersuasive.

Other Board panels have already decided this issue under the most recent RPI case law (as identified by Fall Line, *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336 (Fed. Cir. 2018) ("*AIT*") and *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237 (Fed. Cir. 2018) ("*Worlds*")) in its recently issued final written decision in IPR2017-01430. *Unified Patents Inc. v. Plectrum LLC*, IPR2017-01430, Paper 30 at 9–14 (PTAB Nov. 13, 2018) ("*Plectrum*"). There, patent owner Plectrum argued in its patent owner response that Unified was not the sole RPI. Plectrum's arguments were nearly identical to the arguments made in Fall Line's POPR here, which is unsurprising—Plectrum's counsel also represents Fall Line in this proceeding. Nearly identical evidence (Exhibits 2002–2005, with identical numbering) was presented in *Plectrum* as well.

The Board's final written decision in *Plectrum* considered the evidence and arguments in light of *AIT* and *Worlds*. *Plectrum* at 9–14. In finding that Unified was the sole RPI, the Board explained: "Patent Owner provides no evidence…identifying any member entity that it alleges is controlling this particular

proceeding, or a member that has financed, in whole or in part, this proceeding." *Id.* at 12. Thus, even under *AIT*, "the evidence [was] insufficient to support that Petitioner [had] requested [IPR2017-01430] on behalf of any particular member…or to support that any of Petitioner's members have had control over when and how Petitioner spent the revenue received from its members related to this proceeding....In sum, there is insufficient evidence that any specific member derives benefit from this proceeding." *Id.* at 13. The Board found that patent owner Plectrum had only provided "mere assertions that unnamed real parties-in-interest *might* exist." *Id.* at 14 (emphasis in original). The Board also explained that it had "no evidence tying Petitioner's NPE-deterrent activities to any *particular* member interested in the outcome of this proceeding….[W]e have insufficient information regarding whether Petitioner evaluated any of its member's interest when determining whether to file IPR petitions." *Id* (emphasis in original).

The Board's reasoning in *Plectrum* applies equally here. Fall Line relies on the same evidence that the Board has already considered, and like Plectrum in the earlier proceeding, Fall Line has not identified or alleged any particular party should have been named an RPI. Rather, it vaguely suggests all of Unified's members are RPIs. As the Board has previously found, and as it should find again, such allegations, without evidence and without pointing to any particular relationship, are insufficient to find that Unified's certification is incorrect.

B. Unified's Certification is Correct.

DOCKET ALARM

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.