UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.
Petitioner

v.

REALTIME ADAPTIVE STREAMING, LLC
Patent Owner

IPR2018-00883
U.S. Patent 8,934,535

SYSTEMS AND METHODS FOR VIDEO AND AUDIO DATA STORAGE AND DISTRIBUTION

[REDACTED] PETITIONER'S RESPONSE TO PATENT OWNER'S SUPPLEMENTAL BRIEF ON REAL PARTIES IN INTEREST

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In more than 110 IPR petitions, Petitioner Unified has certified it is the sole real party-in-interest ("RPI") under § 312(a)(2). Each time that identification has been challenged, the Board has held Unified's members are not RPIs.[1] Rather than distinguish any prior decisions, Patent Owner ("Realtime") incorrectly argues that *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336 (Fed. Cir. 2018) (*AIT*), upends them all to now require identifying nearly 200 companies as RPIs. In doing so, Patent Owner not only ignores this case's materially different facts, but also ignores the context of the 315(b) bar—a context not present here. The Board should institute this IPR and deny Realtime's challenge.

[1] *See, e.g.*, *Clouding IP*, IPR2013-00586, Paper 9 (2014); *Dragon IP.*, IPR2014-01252, Paper 37 (2015); *iMTX Strategic*, IPR2015-01061, Paper 9 (2015); *Hall Data*, IPR2015-00874, Paper 11 (2015); *TransVideo*, IPR2015-01519, Paper 8 (2016); *Qurio*, IPR2015-01940, Paper 7 (2016); *Nonend*, IPR2016-00174, Paper 10 (2016); *Am. Vehicular*, IPR2016-00364, Paper 13 (2016); *Plectrum*, IPR2017-01430, Paper 8 (2017); *Digital Stream IP*, IPR2016-01749, Paper 22 (2018); *Fall Line Pts.*, IPR2018-00043, Paper 6 (2018); *MONKEYMedia*, IPR2018-00059, Paper 15 (2018); *Uniloc*, IPR2017-02148, Paper 9 (2018) (nonexaustive).

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I. Unified Is the Sole RPI Under the Applicable Standard

The Petition correctly certifies Unified Patents Inc. as the sole RPI under § 312(a)(2). RPI is interpreted under its common-law meaning—codified in Federal Rule 17(a).[2] Trial Practice Guide ("TPG"), 77 Fed. Reg. 48,756, 48759; *AIT*, 897 F.3d at 1346-51. An RPI is the person entitled to enforce the right being asserted. *AIT* at 1348 (citing Wright & Miller § 1543). The TPG, citing *Taylor v. Sturgell*, states that RPI is a "highly fact-dependent question… assessed on a case-by-case basis" while expanding on Rule 17 with additional factors related to principles of preclusion. TPG, 48759 (citing *Taylor*, 553 U.S. 880, 893-895 (2008)). In *Taylor*, the Supreme Court confirmed that nonparties are not bound by prior judgments except in "discrete exceptions that apply in 'limited circumstances,'" including where the named party is a proxy or agent for the nonparty. 553 U.S. at 893-95, 898. The TPG, in applying *Taylor*, identifies factors that may justify such preclusion, including: whether a non-party is funding, directing, or controlling the IPR; the nonparty's relationships with petitioner and the petition, including involvement in the filing; and the nature of the entity filing the petition. 77 Fed. Reg. at 48,759-60;

[2] Rule 17(a) limits persons who are considered RPIs to persons with seven types of relationships with the entity entitled to sue, *e.g.*, executors and guardians. No such relationships exist here and Realtime never mentions Rule 17(a).

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see Sirius XM Radio, IPR2018-00681, Paper 12 at 3-4 (Sept. 6, 2018) (quoting TPG).

Applying these controlling factors here, Realtime does not dispute that: (1) Unified solely directed, controlled, and funded this IPR; (2) no member communicated with Unified or knew about the IPR before it was filed; and (3) no member has participated in this IPR, either explicitly or implicitly. [redacted] This confirms Unified as the sole RPI, as the Board has routinely found. *See, e.g.*, *Dragon IP*, IPR2014-01252, Paper 37 at 12 ("even if we accept Patent Owner's allegations that Petitioner engages in no activity of practical significance other than filing IPR petitions with money received from its members, this does not demonstrate that" Unified's members were unnamed RPIs.); *supra* n.1.

AIT clarified the Board's RPI standard.[3] In *AIT*, the Federal Circuit applied the traditional fact-intensive "flexible approach that takes into account both equitable and practical considerations" consistent with the TPG. *AIT*, 897 F.3d at 1351 (Fed. Cir. 2018). The Court looked at direction, funding, and control as touchstones, and in the context of § 315(b) remanded for further consideration with "an eye toward determining whether the nonparty is a clear beneficiary that has a

[3] *Worlds Inc. v. Bungie, Inc.*, decided last week, noted that *AIT* "clarif[ied] the meaning of the term 'real party in interest' in the context of § 315(b)." No. 2017-1481, 2018 WL 4262564, at *7 (Fed. Cir. Sept. 7, 2018).

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