

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HULU, LLC, AMAZON.COM, INC., and NETFLIX, INC.,
Petitioners
v.

REALTIME ADAPTIVE STREAMING LLC,
Patent Owner.

Case IPR2018-01169 Patent 8,934,535¹
Case IPR2018-01170 Patent 8,934,535
Case IPR2018-01187 Patent 9,769,477
Case IPR2018-01189 Patent RE46,777
Case IPR2018-01227 Patent 9,578,298

Before, GEORGIANNA W. BRADEN, GREGG I. ANDERSON, KEVIN
W. CHERRY, GARTH D. BAER, NABEEL U. KHAN, and
KAMRAN JIVANI, *Administrative Patent Judges*.

ANDERSON, *Administrative Patent Judge*.

DECISION

Joint Motion to Terminate Proceeding as to Hulu and Amazon.com
37 C.F.R. § 42.72

¹ The parties are not authorized to use this caption.

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INTRODUCTION

In an email dated September 26, 2018, Petitioners Hulu and Amazon.com requested authorization to file Joint Motions to Terminate Inter Partes Reviews as to Hulu, LLC and Amazon.com, Inc. (Motions) from the captioned IPRs.² Ex. 3001. In the 1169, 1170, 1187, 1189, and 1227 IPRs, Hulu, Amazon, and Netflix are petitioners. Hulu, Amazon, and Patent Owner Realtime request termination of the IPRs with respect to Hulu and Amazon, Petitioner Netflix will remain as a petitioner in the 1169, 1170, 1187, 1189, and 1227 IPRs. *Id.*

On September 29, 2018, we authorized the filing of the Motions. Ex. 3001. On October 3, 2018, Hulu, Amazon.com, and Realtime filed the Motions. 1169 IPR, Paper 14; 1170 IPR, Paper 10; 1187 IPR, Paper 10; 1189 IPR, Paper 10; 1227 IPR, Paper 9. Concurrent with the filing of the Motions, separate true copies of RELEASE TERMS agreements were filed respectively for Hulu and Amazon.com. Ex. 2001, 2002.³

Also concurrent with the filing of the Motions, Joint Requests to Keep Separate Pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c) (Requests) were filed by Amazon and Realtime directed to Exhibit 2002. 1169 IPR, Paper 13; 1170 IPR, Paper 9; 1187 IPR, Paper 9; 1189 IPR, Paper 9; 1227 IPR, Paper 8. Hulu and Realtime filed a similar request directed to Exhibit

² Respectively the 1169 IPR, 1170 IPR, 1187 IPR, 1189 IPR, and 1227 IPR.

³ The exhibit numbers are the same for all of the IPRs.

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2001. 1169 IPR, Paper 15; 1170 IPR, Paper 11; 1187 IPR, Paper 11; 1189 IPR, Paper 11; 1227 IPR, Paper 10.

We have not instituted trial in any of the IPRs. Under 35 U.S.C. § 317(a), “[a]n inter partes review instituted under this chapter shall be terminated with respect to any petitioner upon the joint request of the petitioner and patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed.” The grant of the motion to terminate will not result in the termination of the IPRs, because Netflix remains a Petitioner. The parties are reminded that the Board is not a party to the settlements, and may identify independently any question of patentability. 37 C.F.R § 42.74(a).

Generally, however, the Board expects that a proceeding will terminate as to settling parties after the filing of a settlement agreement. *See, e.g.*, Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). The Board is persuaded that, under these circumstances, it is appropriate to terminate this proceeding only as to Hulu and Amazon.com. *See* 37 C.F.R. § 42.72.

ORDER

Accordingly, it is:

ORDERED that the joint motions to terminate the 1169, 1170, 1187, 1189, and 1227 IPR the proceedings with respect to Hulu and Amazon.com are GRANTED, and the proceedings are terminated only as to Hulu and Amazon.com;

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FURTHER ORDERED that Amazon and Realtime's joint requests to keep separate Exhibit 2002 of the 1169, 1170, 1187, 1189, and 1227 IPRs are GRANTED and Hulu and Realtime's joint requests to keep separate Exhibit 2001 of the 1169, 1170, 1187, 1189, and 1227 IPRs are GRANTED, and the specified exhibits shall be: (i) treated as business confidential information; (ii) kept separate from the files of U.S. Patent Nos. 8,934,535; 9,769,477; RE46,777; and 9,578,298; (iii) kept confidential from any third party (including from the non-settling Petitioner Netflix); (iv) filed as "BOARD ONLY"; and (v) made available only to Federal Government agencies on written request, or to any person on a showing of good cause, under the provisions of 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c); and

FURTHER ORDERED that a copy of this Decision will be filed in each of the 1169, 1170, 1187, 1189, and 1227 IPRs.

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