

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner

v.

CYWEE GROUP LTD.
Patent Owner

Case IPR2018-01257
Patent No. 8,552,978

**PATENT OWNER'S REPLY IN SUPPORT OF MOTION FOR
ADDITIONAL DISCOVERY**

TABLE OF AUTHORITIES

Cases

Applications in Internet Time, LLC v. RPX Corp.,
897 F.3d 1336 (Fed. Cir. 2018) 1, 2

Lumentum Holdings, Inc. v. Capella Photonics, Inc.,
IPR2015-00739, Paper 38 (Mar. 4, 2016) 1

Samsung Elecs. Co., Ltd., et al. v. Seven Networks, LLC,
IPR2018-01108 2, 3

Ventex Co., Ltd., v. Columbia Sportswear N.A., Inc.,
IPR2017-00651 (Jan. 24, 2019) 1, 2, 3

Statutes

35 U.S.C. § 312(a) 1

35 U.S.C. § 315(b) 1

LIST OF EXHIBITS

2001	Declaration of Dr. Gary L. Blank [WITHDRAWN]
2002	<i>Curriculum Vitae</i> of Dr. Gary L. Blank CV [WITHDRAWN]
2003	Claim Construction Opinion and Order (Doc. 117), <i>Cywee Group Ltd. v. Samsung Elecs. Co., Ltd.</i> , C.A. No. 2:17-CV-00140-WCB-RSP (E.D. Tex., July 9, 2018)
2004	Expert Declaration of Dr. Joseph LaViola, Ph.D., in Support of Patent Owner Response
2005	<i>Curriculum Vitae</i> of Dr. Joseph LaViola, Ph.D.
2006	Order (Doc. 153), <i>Cywee Group Ltd. v. Samsung Elecs. Co., Ltd.</i> , C.A. No. 2:17-CV-00140-WCB-RSP (E.D. Tex., Aug. 14, 2018)
2007	Memorandum Opinion (Doc. 55), <i>CyWee Group Ltd. v. Motorola Mobility LLC</i> , C.A. No. 17-780-RGA (D. Del., Dec. 21, 2018)
2008	File History of U.S. Application No. 10/396,439
2009	File History of U.S. Application No. 12/413,722
2010	File History of U.S. Application No. 13/367,058
2011	Expert Declaration of Dr. Joseph LaViola, Ph.D., in Support of Motion to Amend
2012	File History of U.S. Provisional Application 61/292558
2013	Google's Responses to CyWee's Requests for Production, <i>CyWee Group Ltd. v. Google, Inc.</i> , No. 1:18-cv-00571 (D. Del.) (Sep. 4, 2018)

2014	Google/Samsung 2011-2012 Mobile Application Distribution Agreement (Android)
2015	<i>CyWee Group, Ltd. v. Samsung Elecs. Co. Ltd.</i> , C.A. No. 2:17-CV-00140-WCB-RSP, Doc. 1-1 (Exhibit A, Infringement Claim Chart)
2016	Web Print-Out “ <i>Introducing PAX: the Android Networked Cross-License Agreement</i> ,” available at https://blog.google/outreach-initiatives/public-policy/introducing-pax-android-networked-cross-license-agreement/

I. FAILURE TO COMPLY WITH § 315(b) IS JURISDICTIONAL

In its Opposition (“Opp.”), Petitioner demonstrates a total misunderstanding of the legal issues raised by Patent Owner’s Motion and ultimately only demonstrates why the requested discovery is warranted. First, Petitioner argues that discovery should be denied because “RPI issues are ‘not jurisdictional,’” citing *Lumenthum Holdings, Inc. v. Capella Photonics, Inc.*, IPR2015-00739, Paper 38 (Mar. 4, 2016). Opp. at 1-2 n.1. But *Lumenthum* involved only § 312(a), not the § 315(b) time bar. The Federal Circuit has cautioned that it is error to conflate § 312(a) with § 315(b) because they are separate and distinct inquiries with separate and distinct consequences. *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1364 (Fed. Cir. 2018) (Reyna, concurring). *Ventex* was designated as precedential because it applies the Federal Circuit’s rule from *AIT*, and makes clear that where an RPI/privity issue implicates § 315(b), the RPI/privity issue is non-waivable and the time bar *is* jurisdictional. *Ventex Co., Ltd., v. Columbia Sportswear N.A., Inc.*, IPR2017-00651, Paper 148 at 2-4 (Jan. 24, 2019).

The remainder of Petitioner’s timeliness argument, *see* Opp. at 2-6, is mere *ipse dixit*. Petitioner baldly asserts that there is “no exclusive relationship” because Petitioner supplies its Android platform to multiple parties and that Patent Owner “alleges that multiple parties should be RPIs.” *Id.* at 4. First, an exclusive relationship is not required, only that Petitioner and the unnamed parties have a

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