UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

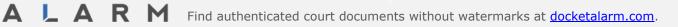
SLING TV L.L.C., SLING MEDIA, L.L.C., DISH NETWORK L.L.C., DISH TECHNOLOGIES L.L.C., Petitioners

v.

REALTIME ADAPTIVE STREAMING LLC, Patent Owner

> Case IPR2018-01342 U.S. Patent No. 8,934,535

PETITIONERS' OPPOSITION TO PATENT OWNER'S MOTION TO TERMINATE THE PROCEEDING UNDER 35 U.S.C. § 315(b)



DOCKET

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The Board should decline Realtime's request to undo institution based on Realtime's § 315(b) time bar argument<sup>1</sup>—one that the Board has already rejected—for at least the following reasons:

First, the POP decision in GoPro, Inc., v. 360Heros, Inc., IPR2018-01754, Paper 38 (Aug. 23, 2019), is of no moment here. Standard Operating Procedure (SOP) #2 mandates that precedential decisions, such as *GoPro*, are binding Board authority only in subsequent matters. Since GoPro issued after this IPR instituted, it is not binding authority. Moreover, GoPro did not deprive the Board of jurisdiction, as § 315(b) is a nonjurisdictional claim-processing rule. The Board implicitly agreed in *GoPro*, as it acknowledged that the time bar may be tolled in certain instances. *Second*, applying *GoPro* retroactively here would run afoul of the law of the case doctrine. The Board already has considered and ruled that DISH timely filed its petition, and no exceptions apply because there are no new facts and GoPro is not a change in the law applicable to this prior matter. Third, applying *GoPro* to this case would violate the APA. The IPR statute demands rulemaking through "regulations," not ad hoc adjudication like the POP process.

*Finally*, fairness dictates that the Board proceed to a final written decision. DISH timely filed its petition in compliance with Board precedent at the time of filing. Retroactive application of an earlier filing deadline would be profoundly

<sup>1</sup> The facts underlying the time-bar dispute are found in Paper 7 at 2-3.

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