

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)**

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The Board should decline Realtime’s request to undo institution based on Realtime’s § 315(b) time bar argument¹—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

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

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