

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SLING TV, L.L.C., et al.,
Petitioners

v.

REALTIME ADAPTIVE STREAMING LLC,
Patent Owner

Case IPR2018-01342
Patent 8,934,535

**REPLY TO REALTIME ADAPTIVE STREAMING LLC'S
PATENT OWNER'S PRELIMINARY RESPONSE**

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EXHIBITS

- DISH1026 Executed Assignment of U.S. Patent No. 8,934,535
- DISH1027 Complaint for Patent Infringement, *Realtime Adaptive Streaming LLC v. EchoStar Technologies, L.L.C. et al.*, Case No. 6:17-cv-00567 (E.D. Tex. Oct. 10, 2017)
- DISH1028 Complaint for Patent Infringement, *Realtime Adaptive Streaming LLC v. Sling TV L.L.C. et al.*, Case No. 1:17-cv-02097 (D. Col. Oct. 10, 2017)

I. INTRODUCTION

Petitioners' reply addresses the Federal Circuit's *Click-To-Call Techs., LP v. Ingenio, Inc., YellowPages.com, LLC*, 899 F.3d 1321 (Fed. Cir. 2018), decision regarding 35 U.S.C. § 315(b), which issued after Petitioners filed the instant petition. Patent Owner errs by relying on *Click-To-Call* for its assertion that Petitioners are time-barred under 35 U.S.C. § 315(b) by the service of a June 2017 complaint. *Click-To-Call* is not controlling and readily distinguishable because the entity that filed the June 2017 complaint, Realtime Data, LLC—not the Patent Owner, Realtime Adaptive Streaming, LLC—did not own the patent and thus did not have standing to file the complaint in the first place. The Federal Circuit recently confirmed that *Click-To-Call* did not address this scenario. *Hamilton Beach Brands, Inc. v. f'real Foods, LLC*, No. 2018-1274, 2018 WL 6005016, at *4 (Fed. Cir. Nov. 16, 2018) (“That f'real lacked standing to file its 2014 complaint alleging infringement of the '662 patent involves a circumstance not present, or considered, in *Click-to-Call*. We do not decide that question in this appeal.”).

Click-To-Call is inapposite because that decision dealt with the effect of actions *subsequent* to the filing of a proper federal complaint, in particular a motion to dismiss without prejudice. The problem here is that the Patent Owner relies on a complaint that was jurisdictionally defective *at the time of filing* because the entity that filed the first complaint did not own the patent and did not have standing to sue. Petitioners need not rely on subsequent events to satisfy § 315(b) because there was never a “proper federal pleading” in the first place.

The June 2017 complaint was a nullity as of its filing date. And while the Federal Circuit has not addressed this particular circumstance, the Board has. As discussed in detail below, prior Board opinions dictate a jurisdictionally deficient complaint, such as the June 2017 complaint, does not trigger § 315(b)'s time bar.

II. NATURE AND STAGE OF THE PROCEEDINGS

On June 6, 2017, Realtime Data LLC (“Realtime Data”) filed an amended complaint in the Eastern District of Texas alleging that Petitioners infringed U.S. Patent No. 8,934,535 (“the ’535 Patent”), among others. IPR2018-01342, Paper No. 6 at Ex. 2001 (PTAB Nov. 8, 2018) (“POPR”). Realtime Data served the amended complaint on Petitioners a few days later. POPR at 4. But there was a major problem with the complaint. Realtime Data did not own the ’535 patent. It had previously transferred the ’535 Patent to a different company, Patent Owner Realtime Adaptive Streaming, LLC (“Realtime Adaptive”) a few months earlier. DISH1026 (recorded assignment of the ’535 patent to Realtime Adaptive that was executed on March 7, 2017). Unsurprisingly, Realtime Data later voluntarily dismissed its complaint without prejudice. POPR at 4 n.3. Realtime Adaptive then filed its first complaints on October 10, 2017 in the Eastern District of Texas and the District of Colorado. DISH1027; DISH1028.

On July 3, 2018, less than a year after the filing of the October 2017 complaints by the *actual* patent owner, Petitioners petitioned for *Inter Partes* Review of the ’535 Patent. On August 16, 2018, the Federal Circuit issued a decision in, *Click-To-Call Techs., LP v. Ingenio, Inc., YellowPages.com, LLC*, 899

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