

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION

Petitioner,

v.

SAINT REGIS MOHAWK TRIBE,

Patent Owner.

IPR2018-01606
Patent 7,620,800 B2

**PETITIONER MICROSOFT CORPORATION'S OPPOSITION TO
PATENT OWNER'S MOTION TO EXTEND ITS PRELIMINARY
RESPONSE DEADLINE UNTIL AFTER THE RESOLUTION
OF ITS PETITION FOR WRIT OF CERTIORARI CONCERNING
WHETHER SOVEREIGN IMMUNITY MAY BE ASSERTED
IN *INTER PARTES* REVIEWS**

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I. INTRODUCTION

The request of Saint Regis Mohawk Tribe (“SRMT”) to delay these proceedings should be denied because it has already been decided that SRMT is not immune from IPR proceedings, and SRMT has waived any argument that it could be immune by asserting the patents at issue here in Federal Court. SRMT therefore cannot show any good cause to depart from the ordinary rules governing IPRs, or any likelihood of harm from complying with those rules.

II. FACTUAL BACKGROUND

On September 8, 2017, Allergan, Inc. transferred numerous prescription drug patents to SRMT in an effort to shield the patents from IPR proceedings. IPR2016-01127, Paper 81 at 7, EX. 2086, EX. 2103. In that case, the Board held that IPR proceedings are administrative enforcement actions that do not invoke the right of sovereign immunity, and ordered that the case proceed. IPR2016-01127, Paper 137. SRMT appealed, but the Federal Circuit affirmed, holding that sovereign immunity “does not extend to actions brought by the federal government,” that an “IPR is more like an agency enforcement action than a civil suit brought by a private party,” and that therefore SRMT may not rely on sovereign immunity to shield itself from IPR proceedings. *Saint Regis Mohawk Tribe v. Mylan Pharm. Inc.*, 896 F.3d 1322, 1325, 1327-28 (Fed. Cir. 2018) (“*Mylan*”). On October 28, 2018, SRMT’s petition for rehearing *en banc* in that

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