

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HEWLETT PACKARD ENTERPRISE COMPANY,
Petitioner,

v.

CHRIMAR SYSTEMS, INC.,
Patent Owner.

Case No. IPR2019-00033
Patent No. 8,902,760

PETITIONER'S REQUEST FOR REHEARING UNDER 37 C.F.R. § 42.71

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STANDARD OF REVIEW.....	2
III.	ARGUMENT.....	2
	A. The Board Misapprehends the Impact of Voluntarily Dismissing a Declaratory Judgment Action on § 315(a)(1)	2
	B. The Board Misapprehends the Applicability of the Federal Circuit’s Decision in <i>Click-To-Call</i> on § 315(a)(1)	4
IV.	PRECEDENTIAL OPINION PANEL REVIEW IS APPROPRIATE IN THIS CASE.....	6
V.	CONCLUSION.....	7

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Applications in Internet Time, LLC v. RPX Corp.</i> , 897 F.3d 1336 (Fed. Cir. 2018)	1
<i>Avigilon Corp. v. Canon Inc.</i> , IPR2018-01626 (P.T.A.B. Mar. 18, 2019)	6, 7
<i>Avigilon Corp. v. Canon Inc.</i> , IPR2018-01627 (P.T.A.B. Mar. 18, 2019)	6
<i>Cisco Sys., Inc. v. Chrimar Sys., Inc.</i> , IPR2018-01508 (P.T.A.B. Jan. 31, 2019)	6
<i>Cisco Sys., Inc. v. Chrimar Sys., Inc.</i> , IPR2018-01511 (P.T.A.B. Jan. 31, 2019)	6
<i>Cisco Sys., Inc. v. Chrimar Sys., Inc.</i> , IPR2018-01514 (P.T.A.B. Feb. 4, 2019)	6
<i>Click-To-Call Techs., LP v. Ingenio, Inc.</i> , 899 F.3d 1321 (Fed. Cir. 2018) (en banc)	<i>passim</i>
<i>Graves v. Principi</i> , 294 F.3d 1350 (Fed. Cir. 2002)	3, 4, 6
<i>Incyte Corp. v. Concert Pharm., Inc.</i> , IPR2017-01256, Paper 13, 3 (PTAB Apr. 9, 2018)	2
<i>Jet, Inc. v. Sewage Aeration Sys.</i> , 223 F.3d 1360 (Fed. Cir. 2000)	4
<i>Mylan Pharm. Inc. v. Horizon Pharma USA, Inc.</i> , IPR2017-01995 (P.T.A.B. Mar. 27, 2019)	6
<i>Ruiz Food Prods., Inc. v. MacroPoint LLC</i> , IPR2017-02016, -02018 (P.T.A.B. Feb. 14, 2019)	6

Other Authorities

37 C.F.R. § 42.8(b)(1)..... 1

37 C.F.R. § 42.71(c)..... 2

37 C.F.R. § 42.71(d) 1, 2

Federal Rule of Civil Procedure 41(a)(1)(A)(i) 3, 4

Rule 41(a)..... 6

Rule 41(a)(1)(A)(i) and (ii)..... 1

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.71(d), Petitioner, Hewlett Packard Enterprise Company (“HPE”), respectfully requests rehearing of the Board’s Decision Denying Institution of *Inter Partes* Review (Paper 11) (hereinafter, “Decision”). In its Decision, the Board held that HPE’s Petition is barred under 35 U.S.C. § 315(a)(1) due to Hewlett-Packard Company (“HPCo.”) and Aruba Networks, Inc. (“Aruba”)¹ previously filing declaratory judgment actions challenging the validity of U.S. Patent No. 8,902,760 (“the ‘760 Patent”). Paper 11 at 8; *see also* Paper 2 at 8-9. The Decision, however, should be reversed, as the Board misapprehends (i) the impact of the voluntary dismissal of HPCo. and Aruba’s declaratory judgment actions under Rule 41(a)(1)(A)(i) before HPE filed its Petition and (ii) the applicability of the Federal Circuit’s decision in *Click-To-Call Techs., LP v. Ingenio, Inc.*, 899 F.3d 1321 (Fed. Cir. 2018) (en banc), to § 315(a)(1).

HPE further requests that this rehearing be heard by the Precedential Opinion

¹ Based on the Federal Circuit decision *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336 (Fed. Cir. 2018), and to satisfy the requirement set forth in 37 C.F.R. § 42.8(b)(1), HPE identified HP Inc. and Aruba as real parties-in-interest to its IPR petition. Paper 2 at 1-2. HPCo. is the former name of HP Inc. Paper 2 at 8, n.5.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.