

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS, LLC,  
Petitioner,

v.

ELECTRONICS AND TELECOMMUNICATIONS  
RESEARCH INSTITUTRE,  
KWANGWOON UNIVERSITY INDUSTRY-ACADEMIC  
COLLABORATION FOUNDATION, AND  
UNIVERSITY-INDUSTRY COOPERATION GROUP  
OF KYUNG HEE UNIVERSITY,  
Patent Owner.

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Patent 9,736,484 B2

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Before JAMESON LEE, SALLY C. MEDLEY, and  
NATHAN A. ENGELS, *Administrative Patent Judges*.

ENGELS, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceeding  
Denying Request for Additional Briefing  
*37 C.F.R. § 42.5*

## INTRODUCTION

In the Petition, Petitioner identifies itself as the sole real party in interest, and Petitioner states that it provided Patent Owner with voluntary discovery relating to the issue. Pet. 73. Patent Owner's Preliminary Response argues Petitioner has not satisfied its obligation to identify all real parties in interest. Prelim. Resp. 56–70.

With an e-mail to the Board, Petitioner requests authorization to file a 15–page reply to Patent Owner's Preliminary Response. Ex. 3001. Patent Owner provided an e-mail opposing Petitioner's request. Ex. 3002.

## DISCUSSION

Among other requirements, a petition for *inter partes* review may be considered only if “the petition identifies all real parties in interest.” 35 U.S.C. § 312(a)(2); *accord* 37 C.F.R. § 42.8(b)(1) (requiring petitioners to “[i]dentify each real party-in-interest for the party” as part of a petitioner's mandatory notices). The petitioner bears the burden of persuasion to show that it accurately names all real parties in interest. *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1343 (Fed. Cir. 2018). That requirement is not jurisdictional, however; “if a petition fails to identify all real parties in interest under § 312(a)(2), the Director can, and does, allow the petitioner to add a real party in interest.” *Wi-Fi One, LLC v. Broadcom Corp.*, 878 F.3d 1364, 1374 n.9 (Fed. Cir. 2018) (en banc); *accord Proppant Express Investments, LLC v. Oren Techs., LLC*, IPR2017-01917, Paper 86 at 7–8 (PTAB Feb. 13, 2019) (precedential).

The Board's precedential decision in *SharkNinja Operating LLC v. iRobot Corp.*, IPR2020-00734, Paper 11 (Oct. 6, 2020) provides that at least under certain circumstances, the Board does not need to decide whether a

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party has identified all real parties in interest at the institution stage. As in *SharkNinja*, there is no argument here that a time bar or other estoppel would prevent institution if an unnamed party were identified as a real party in interest. *See id.* at 19. Although Patent Owner is correct that *SharkNinja* does not *prevent* the Board from determining whether Petitioner has satisfied its obligation to identify all real parties in interest at the institution stage (Prelim. Resp. 52; *see* Ex. 3002), we decline to do so. *See SharkNinja*, IPR2020-00734, Paper 11 at 19–20 (noting that the interests of cost and efficiency favor deciding a contested identification of real parties in interest after institution of trial).

Accordingly, we deny Petitioner’s request for authorization to file a reply to Patent Owner’s Preliminary Response.

#### ORDER

It is ORDERED that Petitioner’s request for authorization to file a reply to Patent Owner’s Preliminary Response is denied.

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