

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, LLC
Petitioner

v.

ELECTRONICS AND TELECOMMUNICATIONS RESEARCH INSTITUTE
Patent Owner

Case No. IPR2021-00827
Patent 9,781,448

**PRELIMINARY REPLY TO
PATENT OWNER'S PRELIMINARY RESPONSE**

TABLE OF CONTENTS

- I. INTRODUCTION 1**
- II. FACTUAL BACKGROUND 1**
- III. THE MEMBERS ARE NOT REAL PARTIES IN INTEREST 1**
 - A. Factor 1: Unified’s Business Model 2
 - B. Factor 2: Unified filed this IPR because Unified believes the ’448 Patent is a poor-quality patent, not to benefit any of the individual Members 4
 - C. Factors 3 and 6: Unified did not consider, and is not representing, any Member’s interest 4
 - D. Factors 4-6: Membership and speculative benefits are insufficient to establish RPI 6
 - E. Factors 7-9 7

I. INTRODUCTION

Patent Owner ETRI (“PO”) seeks denial of institution on the grounds that the Video Codec Zone members (“Members”) of Unified Patents, LLC (“Petitioner”) are real parties in interest (RPIs) or a requirement that the Members be named as RPIs. Petitioner is the sole RPI. Petitioner alone directed, controlled, and funded this IPR. The Petition was not prepared at the behest of, or to benefit, any individual Members. Neither remedy proposed by PO is appropriate here, particularly where no time bar or estoppel issues exist—the ’448 Patent has not been asserted.

II. FACTUAL BACKGROUND

In all of its over 200 IPR petitions, Unified has certified itself as the sole RPI; every time that identification has been challenged, the Board has found it correct. *See, e.g., American Patents LLC*, IPR2019-00482, Paper 115, 33-52 (Aug. 13, 2020) (holding “Petitioner properly named itself as the only RPI”); *Velos Media, LLC*, IPR2020-00352, Paper 39, 45-47 (final written decision holding, post *AIT-II*, there was no need to join Unified Members where no time bar or estoppel issues existed).

III. THE MEMBERS ARE NOT REAL PARTIES IN INTEREST

The Board’s RPI framework, set forth in the Trial Practice Guide (“TPG”) and clarified by the Federal Circuit, directs the Board to consider the “full range of relationships” between parties taking into account “practical and equitable considerations” to ensure parties are not improperly gaming estoppel under §315(e)

and/or the §315(b) time bar. *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1342, 1350-1351 (Fed. Cir. 2018) (“AIT”); *RPX Corp. v. Applications in Internet Time, LLC*, IPR2015-01750, Paper 128, 2, 8-9, 34 (Oct. 2, 2020) (precedential) (“AIT-IP”) (enumerating the factors below).

A. Factor 1: Unified’s Business Model

Since inception, Unified’s sole purpose has been to protect technologies by deterring the use of invalid patents in designated technology areas, not to advance any specific goals of individual Members. *See Ex. 2003*, 18:20-20:1, 74:10-78:1, 81:10-83:6. The Board has assessed Unified’s business structure and confirmed it is the sole RPI to its proceedings. *See, e.g., Velos Media, LLC*, IPR2019-00757, Paper 41, 21 (Aug. 18, 2020); *American Patents*, Paper 122, 8 (Dec. 3, 2020) (analyzing the “nature of [Unified’s] business” and determining that Unified “properly named itself as the sole RPI.”); *Velos Media, LLC*, IPR2020-00352, Paper 39, 45-47.

PO starts by incorrectly identifying Unified’s “key service” as filing IPRs, and it wrongly alleges that Unified’s “primary activity is filing IPRs.” POPR, 73 (quoting *American Patents*). Not so. The evidence refutes this characterization—Unified provides many facets of patent deterrence, including data analytics, essentiality studies and economic surveys directed to standard essential patent issues, landscape tools and standards databases, as well as administrative challenges. *See Ex. 2003*, 19:18-20:1, 74:10-78:1, 81:10-83:6, 101:4-17. In fact, after PO

identifies filing IPRs as Unified’s “primary,” “key service,” the POPR goes on to cite evidence that Unified provides (at its sole discretion) a broad variety of patent-related activities to its Members. POPR, 75 (citing **Ex. 2005**). Validity reviews (of which IPRs are only a subset, given that Unified also files reexaminations and foreign oppositions (*see Ex. 1011*, ¶ 3)) are perhaps the most publicly visible of Unified’s efforts, but hardly the “primary” “key service” of Unified’s deterrent solution. Indeed, the Board has recognized that, even if IPRs represent a large portion of Unified’s activity, “that does not mean that [IPR] filings constitute nearly all of its business or provide a significant amount of the firm’s value to its customers.” *Barkan Wireless IP Holdings, L.P.*, IPR2018-01186, Paper 27, 13 (Dec. 7, 2018) (affirmed on appeal, *see Barkan Wireless IP Holdings, L.P. v. Unified Patents, LLC*, Appeal No. 20-1442, slip op., 2 (Fed. Cir. Mar. 2, 2021)).

Unified’s varied approach to patent deterrence stands in stark contrast to RPX. RPX used IPRs as part of its core aggregation business by negotiating with patent owners on behalf of its clients to reduce costs. This is no split hair; RPX negotiates large settlements with NPEs (and uses IPRs to achieve this goal), to “extricate” clients from litigation and thereby ‘reduce expenses for clients.’” *AIT-II*, 23; *see also id.*, 11, 13, 16, 19, 20. Unified does not pay or seek to extricate Members from litigation, even where (unlike here) the challenged patent is involved in litigation. *See Ex. 2003*, 18:20-20:1, 74:10-78:1, 81:10-83:6; **Ex. 1011**, ¶ 9.

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.