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Subject: Precedential Opinion Panel Request: IPR2021-01413 (U.S. Pat. No. 10,621,228)
Date: Wednesday, March 22, 2023 11:59:35 PM
Attachments: [2023.03.22 HC-AEOs - Petitioner's Request for Rehearing.pdf](#)

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Dear Honorable Board,

I write on behalf of Petitioner Unified Patents, LLC (“Unified”) to request Precedential Opinion Panel (“POP”) Review of the Board’s Order Identifying Real Party in Interest in *Unified Patents, LLC v. MemoryWeb, LLC*, IPR2021-01413, Paper 56 (March 8, 2023) (“the Order”).

Pursuant to PTAB Standard Operating Procedure 2 (Rev. 10), lead counsel for Petitioner Unified makes the following certifications:

- Based on my professional judgment, I believe the Order is contrary to the following constitutional provision, statute, or regulation: Administrative Procedure Act, 5 U.S.C. § 706.
- Based on my professional judgment, I believe the Order is contrary to the following decision(s) of the Supreme Court of the United States, the United States Court of Appeals for the Federal Circuit, or the precedent(s) of the Board:
 - *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983) (If an agency changes course, it “must supply a reasoned analysis” establishing that prior policies and standards are being deliberately changed.).
 - *Consol. Bearings Co. v. United States*, 348 F.3d 997, 1007 (Fed. Cir. 2003) (“An agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently.” (citation omitted)).
 - *Uniloc 2017 LLC v. Facebook Inc.*, 989 F.3d 1018 (Fed. Cir. 2021) (Real party in interest).
 - *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336 (Fed. Cir. 2018) (Real party in interest).
 - *RPX Corp. v. Applications in Internet Time, LLC*, IPR2015-01750, Paper 128 (October 2, 2020) (“RPX”) (Real party in interest).
 - *SharkNinja Operating LLC v. iRobot Corp.*, IPR2020-00734 (October 6, 2020) (Precedential) (Real party in interest and procedure).

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Unified's attached Request for Rehearing ("Request") fully sets forth the basis of the request and the above certifications. The Request is for Board and Parties only.

Putting aside the particulars of this dispute, this case raises fairness, procedural, and case management issues—not to mention inconsistent results between panels—that will affect the Office's conduct of IPRs and PGRs in the future. In short, the POP should take this case *at least* to make it clear that *SharkNinja* applies at any stage of the proceeding. Otherwise, other parties—hundreds of Unified members, but also suppliers, customers, subsidiaries, merging companies, etc.—could find themselves facing the same procedural and due process morass created when the Board issues an inconsistent RPI determination that affects third parties without giving those third parties notice and an opportunity to be heard.

In addition, the POP should take this case to ensure proper application of their own precedent, and to explain the *RPX* factors, much like the Board did in *Advanced Bionics* with the *Becton-Dickinson* factors, to promote uniform compliance with binding precedent and consistent results when faced with the similar situations. As the Federal Circuit has explained, "the heart of the [RPI] inquiry is focused on whether a petition has been filed at a party's behest." *Facebook*, 989 F.3d at 1029 (quotation omitted). The factors considered, *how* they are considered, and the ultimate result should reflect that focus and breed consistency.

At bottom, *something is not right*. Nothing changed, yet this panel arrived at a different result than the over two dozen Board panels that decided the issue before. Unified's business—including, *inter alia*, deterring the use of invalid patents—has remained unchanged. Unified has consistently and voluntarily exceeded the law's requirements, avoiding even the appearance of inappropriate communications with its membership. Only the panel, and the result, changed.

For the reasons fully set forth in the attached Request, Petitioner Unified respectfully requests POP review, and reversal, or at least vacatur, of the Order.

Very Respectfully,

Jonathan Strang
Counsel for Petitioner

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