

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC. and AMAZON WEB SERVICES, INC.,
Petitioner,

v.

APPISTRY, INC.,
Patent Owner.

Case IPR2015-00480
Patent 8,200,746 B2

Before DAVID C. McKONE, JAMES A. TARTAL, and
JO-ANNE M. KOKOSKI, *Administrative Patent Judges*.

KOKOSKI, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Amazon.com, Inc. (“Amazon.com”) and Amazon Web Services, Inc. (“AWS”) (collectively, “Petitioner”) filed a Petition (“Pet.”) to institute an *inter partes* review of claims 1–17, 19–20, and 22–27 of U.S. Patent No. 8,200,746 B2 (“the ’746 patent,” Ex. 1001). Paper 2. Appistry, Inc. (“Patent Owner”) filed a Preliminary Response (“Prelim. Resp.”). Paper 8. We have jurisdiction under 35 U.S.C. § 314.

In the Preliminary Response, Patent Owner contends that the Petition fails to list “all the real parties-in-interest,” as required by 35 U.S.C. § 312(a)(2). Prelim. Resp. 3–11. The Board sought additional briefing from Petitioner directed to Patent Owner’s contention that Amazon Digital Services, Inc. (“ADS”) and AWSHC, LLC (“AWSHC”) are real parties-in-interest to the instant petition. Paper 17. Petitioner was permitted to include evidence (exclusive of additional testimony) as part of any additional briefing. *Id.* Petitioner did not file a brief or evidence in response to the Board’s request.

Upon consideration of the Petition, the Preliminary Response, and the evidence of record, we determine Petitioner has not sufficiently demonstrated that the Petition complies with the statutory requirement to identify all real parties-in-interest. Accordingly, the Petition is denied.

A. *Related Proceedings*

The parties indicate that the ’746 patent is involved in a district court infringement action between Petitioner and Patent Owner that was transferred recently from the U.S. District Court for the Eastern District of Missouri, Eastern Division (Case No. 4:13-cv-02547-HEA) to the United

States District Court for the Western District of Washington, Seattle
Division (Case No. 2:15-cv-00311). Paper 9, 2; Paper 15, 2.

II. ANALYSIS

In an *inter partes* review, the statutory requirement under 35 U.S.C. § 312(a)(2) that a petition identify all real parties-in-interest is a threshold issue. See *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, Case IPR2013-00453, slip op. at 7–8 (PTAB Jan. 16, 2015) (Paper 88). We generally accept the petitioner’s identification of real parties-in-interest at the time of filing the petition. Our practice in this regard, however, acts as a rebuttable presumption that benefits the petitioner. When, as here, a patent owner provides sufficient rebuttal evidence that reasonably brings into question the accuracy of the petitioner’s identification of real parties-in-interest, the burden remains with the petitioner to establish that it has complied with the statutory requirement. This allocation of the burden for establishing whether a third party has, or has not, been identified properly as a real party-in-interest accounts appropriately for the fact that a petitioner is far more likely to be in possession of, or have access to, evidence relevant to the issue than the patent owner.

Our Practice Guide explains that a real party-in-interest, as used in the AIA trial context, “is the party that desires review of the patent. Thus, the ‘real party-in-interest’ may be the petitioner itself, and/or it may be the party or parties at whose behest the petition has been filed.” *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,759 (Aug. 14, 2012). The determination of whether a party is a real party-in-interest is a “highly fact-dependent question” (*id.*), in which the focus is on the party’s relationship to the *inter partes* review pending before the Board, and the degree of control

the party can exert over the proceeding. *See Aruze Gaming Macau Ltd. v. MGT Gaming Inc.*, Case IPR2014-01288, slip op. at 11 (PTAB Feb. 20, 2015) (Paper 13). “[I]f a nonparty can influence a petitioner’s actions in a proceeding before the Board, to the degree that would be expected from a formal copetitioner, that nonparty should be considered [a real party-in-interest] to the proceeding.” *Id.* at 12.

The Petition identifies only Amazon.com and AWS as real parties-in-interest. Patent Owner contends that the Petition fails to identify all real parties-in-interest because Amazon.com and AWS have no direct relationship, but instead, Amazon.com controls AWS only through ADS and AWSHC. Prelim. Resp. 8–10.

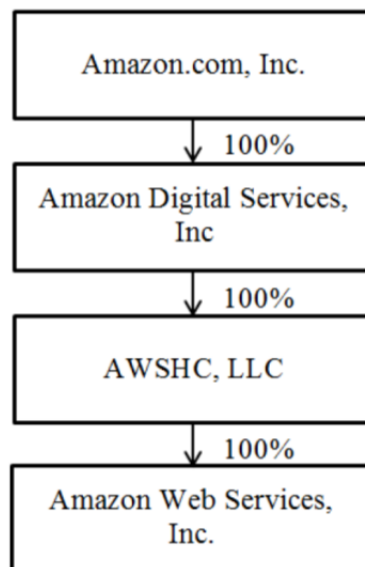
Patent Owner contends that Amazon.com’s 2013 Annual Report and Form 10-K (Ex. 2003), filed with the Securities and Exchange Commission, identifies Andrew R. Jassy as Senior Vice President of AWS, and as an Executive Officer of Amazon.com. Prelim. Resp. 5 (citing Ex. 2003, 16). According to Patent Owner, Amazon.com exercises control over AWS because “Mr. Jassy, who is an officer of Petitioner Amazon.com, Inc. and is directly responsible to Petitioner Amazon.com’s CEO and its Board of Directors, heads up and controls Petitioner AWS, which ‘is a subsidiary of Amazon.com.’” *Id.* at 6 (citing Ex. 2004). With respect to AWSHC and ADS, Patent Owner argues:

[T]he decision to file the Petition on behalf of AWS ultimately fell on Mr. Jassy and, in turn [Amazon.com’s President, Chief Executive Officer, and Chairman of the Board Jeffrey P. Bezos], and the Board of Directors of Amazon.com. But the only way that Amazon.com can exercise such control over AWS, under the corporate structure explained above, is indirectly. That is, it must exercise control over ADS, which can then exercise control over AWSHC, which in turn can

exercise control over AWS. As such, these entities (ADS and AWSHC) are also necessarily controlling (or at least have the ability to control) Petitioner AWS's participation in the present proceeding.

Id. at 7.

Patent Owner also contends that, by virtue of the parent-subsidary relationship between ADS, AWSHC, and AWS, “both AWSHC and ADS can exercise complete control over AWS, including its participation in this proceeding.” *Id.* at 6 (citing *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 771–72 (1984)). According to Petitioners’ Federal Rule of Civil Procedure 7.1 Disclosure of Corporation Interest Certificate (Ex. 2002), filed in the related district court proceeding, Petitioner AWS is a wholly-owned subsidiary of AWSHC, which in turn is a wholly-owned subsidiary of ADS, and ADS is a wholly-owned subsidiary of Petitioner Amazon.com. These corporate relationships are illustrated in the following diagram reproduced from page 4 of Patent Owner’s Preliminary Response.



Patent Owner provides sufficient evidence that reasonably brings into question the accuracy of Petitioner’s identification of the real parties-in-

interest. While the existence of a parent-subsidary relationship alone may not be sufficient to establish a parent's status as a real party-in-interest, in this case the close corporate relationship between Amazon.com and AWS strongly suggests that ADS and AWSHC, the subsidiary companies in the chain of corporate ownership between Amazon.com and AWS, are involved and controlling corporations representing the unified interests of themselves and Petitioner.

The burden remains with Petitioner to establish that it has complied with the statutory requirement to identify all real parties-in-interest. Petitioner was given the opportunity to provide additional evidence to rebut Patent Owner's evidence and meet its burden, but Petitioner chose not to provide any such evidence. As a result, we determine, based on the record before us, Petitioner has not sufficiently demonstrated that the Petition complies with the statutory requirement to identify all real parties-in-interest. *See* 35 U.S.C. § 312(a); 37 C.F.R. § 42.8(b)(1).

Having determined that the Petition does not comply with the statutory requirement to identify each real party-in-interest, the Board determines that the Petition is incomplete. Board Rule 42.106(b) provides that "[w]here a party files an incomplete petition, no filing date will be accorded, and the Office will dismiss the petition if the deficiency in the petition is not corrected within one month from the notice of an incomplete petition." In this instance, however, it is uncontroverted that a complaint alleging infringement of the '746 patent was served on December 23, 2013. Pet. 2; Prelim. Resp. 12. Thus, even if corrected, the earliest filing date that could be accorded to the Petition would not fall within the one-year period

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specified by 35 U.S.C. § 315(b), and the Petition would be denied as untimely.

III. ORDER

In consideration of the foregoing, it is
ORDERED that the Petition is *denied*.

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