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Paper 12
Entered: October 6, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BRIGHT HOUSE NETWORKS, LLC,
WIDEOPENWEST FINANCE, LLC,
KNOLOGY OF FLORIDA, INC., and
BIRCH COMMUNICATIONS, INC.,
Petitioner,

v.

FOCAL IP, LLC,
Patent Owner.

Case IPR2016-01252
Patent 8,155,298 B2

Before SALLY C. MEDLEY, JONI Y. CHANG, and BARBARA A. PARVIS, *Administrative Patent Judges*.

CHANG, *Administrative Patent Judge.*

DECISION
Granting Petitioner's Unopposed Motion to Dismiss Petition
37 C.F.R. §§ 42.5(a) and 42.71(a)

On June 23, 2016, Petitioner filed the instant Petition requesting an *inter partes* review of claim 1 of U.S. Patent No. 8,155,298 B2 ("the '298 patent"). Paper 1, "Pet." Pursuant to our prior authorization, Petitioner filed a Motion to Dismiss the Petition on October 4, 2016. Paper 11, "Mot." Patent Owner does not oppose the Motion. Mot. 1. For the reasons that follow, Petitioner's Motion to Dismiss the Petition is *granted*.

Petitioner contends that, upon determination that incorrect real party-in-interest identification[1] was submitted in the instant Petition, Petitioner filed another Petition for *inter partes* review, challenging the patentability of the same claim—namely, claim 1 of the '298 patent—based on the same arguments and supporting evidence, but with the correct real party-in-interest identification, in Case IPR2016-01263. Mot. 1, 2. Petitioner alleges there is good cause for granting Petitioner's request to dismiss the instant Petition. *Id*. at 2. Having reviewed the record before us, we agree.

As Petitioner notes, the instant proceeding is in its preliminary stage. *Id*. Patent Owner has yet to file a preliminary response and the Board has not decided whether to institute a trial. *Id*. Given, essentially, a duplicate Petition has been filed in Case IPR2016-01263, a dismissal of the instant Petition at this early juncture would minimize the burden on the Parties and the Board, and would "secure the just, speedy, and inexpensive resolution"

[1] "Metaswitch Networks Ttd." should have been listed instead of "Data Connection Ltd. d/b/a Metaswitch Networks." *Id*. at 1.

of the proceeding. *See* 37 C.F.R. § 42.1(b). Based on the specific facts presented, we determine that it is appropriate to dismiss the instant Petition. *See* 37 C.F.R. §§ 42.5(a), 42.71(a).

ORDER

In consideration of the foregoing, it is:

ORDERED that Petitioner's unopposed Motion to Dismiss the instant Petition is *granted*;

FURTHER ORDERED that the Petition is *dismissed* under 37 C.F.R. § 42.71(a), and the instant proceeding is *terminated*; and

FURTHER ORDERED that Petitioner's request for a refund of the post-institution fee will be processed by the administrative staff in due course upon the entry of this Decision.

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