Trials@uspto.gov
571-272-7822

Paper 10
Date: February 4, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STAYLINKED CORPORATION,
Petitioner,

v.

IVANTI, INC.,
Patent Owner.

IPR2021-00022
Patent 9,648,083 B2

Before SALLY C. MEDLEY, NORMAN H. BEAMER, and AARON W. MOORE, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

DECISION
Dismissal Prior to Institution of Trial
35 U.S.C. § 314

On January 28, 2021, with Board authorization, Petitioner filed an "Unopposed Motion to Dismiss Without Prejudice The Petition" in this proceeding. Paper 9 ("Mot."). In the motion, Petitioner represents that Patent Owner does not oppose the motion. Mot. 2.

The Petition in this proceeding was filed on October 5, 2020. Paper 8. Patent Owner's Preliminary Response would be due February 6, 2021, and the Board's decision on institution would be due three months after the Patent Owner's Preliminary Response deadline or the date when it is filed. 35 U.S.C. § 314. The Board has not yet considered the merits of the Petition.

In the motion, Petitioner states that dismissal is justified because this proceeding is in its early stages. Mot. 3. Petitioner explains that it is "evaluating whether to file a subsequent petition challenging [the patent] based on some or all of the prior art and grounds asserted in the Petition but with additional evidence and/or grounds." *Id.* at 3–4.

Under 37 C.F.R. § 42.71(a), "[t]he Board may take up petitions or motions for decisions in any order, [and] may grant, deny, or dismiss any petition or motion." This proceeding is at an early stage, and few resources have been expended by the Board in this proceeding. Under these circumstances, we are persuaded that it is appropriate to dismiss the Petition and terminate the proceeding to promote efficiency and minimize unnecessary costs.

This paper does not constitute a final written decision pursuant to 35 U.S.C. § 318(a) or a judgment pursuant to 37 C.F.R. § 42.73. We note that Petitioner states that its Motion "is contingent upon dismissal without prejudice," and "requests that dismissal of the Petition be without prejudice to the Board's authority to exercise its discretion in determining whether to institute an inter partes review on any subsequently filed petition." Mot. 2, 4.

However, during a February 4, 2021 conference call with the parties, it was explained that "dismissals without prejudice" are not in accord with Board practice, and counsel for Petitioner withdrew that contingency.

Accordingly, it is:

ORDERED that Petitioner's Motion to Dismiss IPR2021-00022 as modified by Petitioner during the February 4, 2021 conference call is granted; and

FURTHER ORDERED that the petition in IPR2021-00022 is dismissed and the proceeding in IPR2021-00022 is terminated.

PETITIONER:
Adam K. Richards
Thomas Hardman
RAY QUINNEY & NEBEKER P.C.
arichards@rqn.com
thardman@rqn.com

PATENT OWNER:
Parrish Freeman
Eric Maschoff
MASCHOFF BRENNAN PLLC
pfreeman@mabr.com
emaschoff@mabr.com