

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VMWARE, INC.,
Petitioner,

v.

CIRBA IP, INC.,
Patent Owner.

IPR2021-01210
IPR2021-01211
Patent 10,951,459 B2

Before JUSTIN T. ARBES, DAVID C. McKONE, and RUSSELL E. CASS,
Administrative Patent Judges.

CASS, *Administrative Patent Judge.*

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

VMware, Inc. (“Petitioner”) filed two Petitions requesting *inter partes* review of various claims of U.S. Patent No. 10,951,459 B2 (the “’459 patent”), owned by Cirba IP, Inc. (“Patent Owner”). Paper 3.¹ Petitioner subsequently contacted the Board via e-mail, stating that it would be filing motions to terminate these proceedings, and that Patent Owner did not oppose those motions. We authorized Petitioner to file a motion to dismiss in each of these proceedings.

In its Motions, Petitioner explains that it filed its petitions for *inter partes* review of the ’459 patent on July 8, 2021, less than four months after the ’459 patent issued. Paper 15, 1 (“Mot.”). Petitioner also explains that it filed a petition for post-grant review of the ’459 patent (PGR2021-00098) two days before filing its petitions for *inter partes* review. *Id.* Petitioner notes that we granted institution of PGR2021-00098, finding preliminarily that “the present record supports the conclusion that the pre-AIA priority applications lack sufficient written description for the challenged claims,” and that the ’459 patent was eligible for post-grant review. *Id.*

Petitioner states in each motion that “if the ’459 patent is an AIA patent, then it was not eligible for *inter partes* review at the time this petition was filed.” *Id.* at 1–2; see 35 U.S.C. § 311(c)(1) (“A petition for *inter partes* review shall be filed after the later of either—(1) the date that is 9 months after the grant of a patent; or (2) if a post-grant review is instituted under chapter 32, the date of the termination of such post-grant review.”). “Accordingly, based on the preliminary findings in the Board’s Decision on Institution in PGR2021-00098, Petitioner moves to terminate this *inter*

¹ For brevity, citations herein are to the record in IPR2021-01210. Corresponding papers may be found in the record of IPR2021-01211.

partes review,” explaining that “[t]ermination ‘will preserve the resources of the Board and the parties, and w[ill] promote efficiency,’ by foregoing the necessity of the Board issuing an institution decision.” Mot. 2. Petitioner states that Patent Owner does not oppose its motions. *Id.* at 1–2.

These proceedings are at an early stage and we have not yet considered the merits of the Petitions, nor have we instituted any trial. In view of the early stage of these proceedings, we determine it is appropriate to dismiss the Petitions and terminate the proceedings to promote efficiency and minimize unnecessary costs. *See* 37 C.F.R. § 42.71(a); *General Elec. Co. v. Regents of the Univ. of Cal.*, IPR2020-01456, Paper 9 (PTAB Dec. 1, 2020) (granting unopposed motions to dismiss).

Accordingly, it is:

ORDERED that the Petitions are *dismissed* and these proceedings are terminated. This paper does not constitute a final written decision pursuant to 35 U.S.C. § 318(a).

IPR2021-01210, -01211

Patent 10,951,459 B2

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