UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD. AND NINTENDO
OF AMERICA INC.,
Petitioners,

v.

AMERICAN GNC CORPORATION,
Patent Owner.

Case IPR2024-00667
Patent No. 6,508,122 B1

PETITIONERS' OPPOSITION TO
PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY

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I. INTRODUCTION

Patent Owner's arguments about the time bar under 35 U.S.C. § 315(b) rely entirely on *American GNC Corp. v. OnePlus Tech. (Shenzhen) Co., et al.*, No. 6:20-cv-00171-ADA (W.D. Tex.) ("2020 Action"), in which Petitioner was not named as a defendant. Patent Owner argues that two of the named defendants in that action, *i.e.*, STMicroelectronics N.V. and STMicroelectronics S.R.L. ("STMicro"), are real-parties-in-interest ("RPI") to Petitioner, thus triggering the statute of limitations under § 315(b). (Motion for Discovery ("Motion"), Paper 40, at 2.)

Patent Owner's motion for additional discovery relies on an unprecedented and overbroad interpretation of § 315(b) that would lead to anomalous and even absurd results—triggering a time bar against scores of unintended parties and overwhelming the Board with unnecessary IPR petitions. And even if Patent Owner could make a threshold showing that the terms of § 315(b) apply to this case (which it cannot), its argument would still fail because Patent Owner cannot show that it properly served the complaint in the 2020 Action on STMicro, or that any real-party-in-interest relationship exists as between Petitioner and STMicro. None of these flaws would be remedied by the requested discovery. Because Patent Owner's argument under § 315(b) is irremediably flawed, the requested discovery would serve no useful purpose and should be denied.

II. THE TIME BAR IN SECTION 315(B) WAS NOT TRIGGERED

The statute of limitations under § 315(b) was never triggered because STMicro was not sued for infringement of the challenged patent. As Petitioner explained in its Reply in support of the Petition, Patent Owner only sued STMicro for infringement of different patents. (Reply, Paper 27, at 20-21 (citing EX2012, ¶ 48 and EX1049, ¶ 13).) Patent Owner asserted the challenged patent in the 2020 Action only against OnePlus Technology (Shenzhen) Co. ("OnePlus"), and Patent Owner does not contend that OnePlus is a real-party-in-interest, privy, or has any other relationship with Petitioner relevant to § 315(b). Because the statute of limitations under § 315(b) was never triggered, Patent Owner's requested discovery would serve no purpose and thus should be denied.

Patent Owner responds that the plain text of § 315(b) applies because the literal language of the statute was satisfied, and "[u]nambiguous statutes are to be read literally." (Motion, at 3.) But Patent Owner's analysis improperly focuses on the statutory language in isolation. The Supreme Court and the Federal Circuit have cautioned that "[i]n determining whether a statute is ambiguous, a reviewing court 'should not confine itself to examining a particular statutory provision in isolation. The meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.'" *James v. Von Zemensky*, 301 F.3d 1364, 1366 (Fed. Cir. 2002) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529

U.S. 120, 132 (2000)); *see also Brown v. Gardner*, 513 U.S. 115, 118 (1994) ("Ambiguity is a creature not of definitional possibilities but of statutory context[.]")).

The statutory text of § 315(b) does not unambiguously resolve the question of whether service of a complaint triggers the time bar under § 315(b) when, as here, the complaint did not assert the challenged patent against the IPR petitioner or its alleged RPI. The statutory language does not suggest such an outcome; to the contrary it suggests that "a complaint alleging infringement of the patent" must be directed to the IPR petitioner or its alleged RPI, because § 315(b) further requires that the complaint be "served" on that party. This is consistent with the text and structure of § 315 as a whole, which indicates that the "petitioner, real party in interest, or privy of the petitioner" should be understood as an accused infringer of the patent for purposes of § 315(b). Section 315 first addresses the "Infringer's Civil Action" (§ 315(a)) and then turns to the "Patent Owner's Action" (§ 315(b))—these two subsections separately addressing a civil patent litigation commenced, respectively, by the alleged infringer and by the patent owner. In the section covering an "Infringer's Civil Action," the "infringer" is equated with "the petitioner or real party in interest fil[ing] a civil action challenging the validity of a claim of the patent," and authorizes a stay of an action if "the patent owner files a civil action or counterclaim alleging that the petitioner or real party in interest has infringed the

patent[.]" 35 U.S.C. § 315(a)(1), (a)(2)(B). Turning to "Patent Owner's Action" in § 315(b), the meaning of the phrase "the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent," is informed by the statutory language of the preceding subsection § 315(a) and the structure of § 315 as a whole – and was clearly intended by Congress to refer to a party who was served with a complaint charging that party with infringement of the challenged patent. There is no evidence that Congress ever contemplated applying § 315(b) to a party who was "served" with the complaint but never charged with infringement of the challenged patent.

This is also consistent with the legislative history of § 315(b), which confirms that the purpose of the statute of limitations under § 315(b) was to accord a potential IPR petitioner, ***after being sued for infringement of the patent***, sufficient time to understand the basis of the infringement claims leveled against it:

> The House bill also extends the deadline for allowing an accused infringer to seek inter partes review after he has been sued for infringement. The Senate bill imposed a 6-month deadline on seeking IPR after the patent owner has filed an action for infringement. The final bill extends this deadline, at proposed section 315(b), to 1 year. High-technology companies, in particular, have noted that they are often sued by defendants [sic; plaintiffs] asserting multiple patents with large numbers of vague claims, <u>making it difficult to determine in the first few months of the litigation which claims will be relevant and</u>

> how those claims are alleged to read on the defendant's products. Current law imposes no deadline on seeking inter partes reexamination. And in light of the present bill's enhanced estoppels, it is important that the section 315(b) deadline afford defendants a reasonable opportunity to identify and understand the patent claims that are relevant to the litigation. It is thus appropriate to extend the section 315(b) deadline to one year.

(EX1067, 157 CONG. REC. S5402-43, at S5429 (daily ed. Sept. 8, 2011) (statement of Sen. Jon Kyl) (emphasis added).); *see also Motorola Mobility LLC v. Arnouse*, IPR2013-00010, Paper 20 at 4-5 (PTAB Jan. 30, 2013) ("The legislative history of 35 U.S.C. § 315(b) shows that the primary concern related to the one-year time period was to provide defendants sufficient time to fully analyze the patent claims, but not to create an open-ended process.").

The purpose of the one-year period under § 315(b) would be frustrated if the time bar applied to parties that were ***not*** sued for infringement of the challenged patent. This is because a patent litigation matter cannot afford a defendant / IPR petitioner an opportunity to "determine…. which claims will be relevant and how those claims are alleged to read on the defendant's products," 157 CONG. REC. S5429, if the challenged patent was not asserted against that party in the litigation.

Patent Owner's literal reading of § 315(b) would also lead to anomalous and even absurd results. Under Patent Owner's decontextualized and surface-level interpretation, the time bar would not even be limited to co-defendants such as

STMicro – it would be triggered as to ***anyone*** who happened to have been served with "a complaint alleging infringement of the patent". For example, it is common in patent litigation to serve subpoenas on third parties seeking documents and other discovery (such as discovery into suppliers, customers, and prior art), which invariably requires service of the operative complaint, protective order, and other documents from the case docket. Under a literal interpretation of § 315(b), every one of these third parties, even if they have no relationship whatsoever to the challenged patent, would now be subject to the time bar because they were "served with a complaint alleging infringement of the patent." This could not only extend to every supplier and end customer, but also to registered agents, former employers, competitors, business partners, insurance companies, third party and court-appointed experts, among many others. This would unnecessarily increase the workload of the PTAB by forcing companies who had not been accused of infringement of a patent to file protective IPR petitions for fear of forever forfeiting the ability to challenge that patent in IPR because of the § 315(b) time bar.

If anything, the facts here are even more egregious because Patent Owner made a ***deliberate*** decision in the 2020 Action to name STMicro as a defendant but ***not*** assert the challenged patent against it. (EX1049, ¶ 13.) Patent Owner nevertheless argues that § 315(b) is satisfied because STMicro was on ***notice*** that its alleged customer OnePlus had been accused of infringing the challenged patent

through its alleged use of STMicro products. (Motion, at 5-6.) But the Board has consistently held that "notice" is not sufficient to trigger the time bar under § 315(b). *See, e.g.*, *Lightricks Ltd. v. Plotagraph, Inc.*, IPR2023-00153, Paper 9 at 11-12 (PTAB Sept. 5, 2023) ("[M]ere 'notice' is not 'legally effective' 'service.'") (citing *IpDatatel, LLC v. ICN Acquisition, LLC*, IPR2018-01823, Paper 17 at 10-18 (PTAB Apr. 17, 2019).)

The rule Patent Owner proposes would also be unpredictable and unworkable. The Supreme Court has observed that "[p]redictability" is a "primary goal of statutes of limitations[.]" *Owens v. Okure*, 488 U.S. 235, 240 (1989). As the Board explained in *IpDatatel*, "[a]s *Click-to-Call* makes clear, the purpose of § 315(b) is to provide a bright-line deadline for parties to decide whether they wish to pursue an *inter partes* review." *IpDatatel*, IPR2018-01823, Paper 17 at 18 (citing *Click-To-Call Techs., LP v. Ingenio, Inc.*, 899 F.3d 1321, 1347 (Fed. Cir. 2018)). The goal of predictability is best served here by adopting a bright-line rule in which § 315(b) applies to an IPR petitioner (or its alleged RPI or privy) who was actually sued for infringement of the challenged patent—and not adopting an ambiguous rule that could extend to anyone who was served with or had "notice" of the underlying complaint. This would promote legal certainty and uniformity by allowing parties to determine whether § 315(b) bar applies by simply consulting a single document – the complaint – which under the Federal Rules of Civil Procedure

must identify the asserted patents, the defendants accused of infringing them, and provide "a short and plain statement of the claim showing that the pleader is entitled to relief[.]" Fed. R. Civ. P. 8(a)(2).

The rule Patent Owner advances, on the other hand, would invite needless uncertainty by requiring that the PTAB delve into intricate questions of federal civil procedure and the potentially complex business and contractual relationships between the accused and non-accused co-defendants in a litigation. For example, Patent Owner invites the Board to disregard the voluntary choices it made when it drafted the complaint in the 2020 Action – to not sue STMicro for infringement of the challenged patent – and find that STMicro was ***effectively*** sued for infringement of that patent because of allegations against another party. This approach could also require that the PTAB evaluate and interpret documents outside the complaint about the relationship between the products of co-defendants and, as the present motion illustrates, invite needless discovery disputes. The PTAB's job would be made even more challenging when, as here, the time bar under § 315(b) was allegedly triggered not by service of a complaint on the IPR petitioner, but on foreign entities (such as STMicro) who are not before the Board and potentially outside its jurisdiction.

The PTAB has long rejected the type of overly literal reading of § 315(b) that Patent Owner advances here. For example, the PTAB has long held that § 315(b) only applies to "defendants," even though that word does not appear anywhere in

that section. *See, e.g.*, *Motorola Mobility*, IPR2013-00010, Paper 20 at 5 ("Under [patent owner's] construction, the one-year time period would begin to run even when the petitioner is not yet a defendant in the litigation. We do not believe that the Congress intended to have the time period start before a petitioner is officially a defendant in a law suit."); *Petroleum Geo-Services Inc. v. WesternGeco LLC*, IPR2014-00687, Paper 100 at 40-42 (PTAB Dec. 15, 2015) ("[W]e interpret 35 U.S.C. § 315(b) as requiring service upon a defendant to the lawsuit. Petitioner was not a defendant[.]"). Similarly, in *Aristocrat Techs., Inc. v. High 5 Games, LLC*, IPR2018-0529, Paper 26 at 7-11 (PTAB July 29, 2019), the Board held that § 315(b) was not triggered as to a party who was served with a proposed amended complaint attached to a motion to amend, where the district court had not yet ruled on the motion – even though the statute does not on its face distinguish between authorized and unauthorized complaints. The Board reasoned that under § 315(b), the IPR petitioner was not "'brought under a court's authority, by formal process,' i.e., was not officially a defendant, in relation to the [challenged] patent," by simply having been served with the proposed complaint. *Id.* at 10 (citation omitted).

In each of these cases, the Board looked beyond the surface language of § 315(b) to interpret and ascertain its contours. These cases did not involve, to use Patent Owner's wording, "add[ing] a requirement… that is not present the [sic] literal text of the statute." (Motion, at 2.) They instead involved interpreting the

language of § 315(b) in the real-world context of federal patent litigation and with a view to its relationship to the IPR procedure. *See, e.g.*, *Gundy v. United States*, 588 U.S. 128, 141 (2019) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.") (citation omitted); *Mattox v. McDonough*, 56 F.4th 1369, 1376 (Fed. Cir. 2023) ("[S]tatutory interpretation is a holistic endeavor that requires consideration of a statutory scheme in its entirety.") (citation omitted).

Finally, none of the cases cited by Patent Owner suggest a different result. The Federal Circuit's decision in *Facebook, Inc. v. Windy City Innovations, LLC*, 973 F.3d 1321, 1333-36 (Fed. Cir. 2020) did not address the time bar under § 315(b) but an entirely different provision governing joinder of IPR petitions under § 315(c). Nor is this case controlled by the Federal Circuit's vacated panel decision in *Click-To-Call Techs.*, 899 F.3d at 1331, *vacated sub nom. Thryv, Inc v. Click-To-Call Techs., LP*, 590 U.S. 45 (2020). *Click-to-Call* dealt with a fundamentally different issue – whether the indisputable service of a complaint under § 315(b) was nullified by a subsequent dismissal of the action. There was no dispute in that case that the defendant (Ingenio, LLC, previously known as Keen, Inc.) was in fact sued for infringement of the patent challenged in the IPR petition. *Click-To-Call*, 899 F.3d at 1325; *see also id.* at 1342 (Taranto, J., concurring) ("In September 2001, Ingenio (then called Keen) was served with a complaint asserting that it infringed

the ’836 patent, and there is no dispute about the content of the complaint or the propriety of service.”).

In sum, because the § 315(b) time bar, as a threshold matter, does not apply in this case, Patent Owner’s motion for discovery should be denied.

III. EVEN IF PATENT OWNER’S STATUTORY INTERPRETATION WERE CORRECT, ITS SHOWING OF SERVICE IS DEFICIENT

Even if Patent Owner’s erroneous interpretation of 35 U.S.C. § 315(b) were adopted, its motion for discovery should also be denied in light of other deficiencies indicating that its time bar argument under § 315(b) will fail.

A. Patent Owner Has Not Shown that STMicro Was Properly Served.

The Board has made clear that § 315(b) requires legally effective service of the complaint. *Lightricks*, IPR2023-00153, Paper 9 at 11-12 (holding that § 315(b) was not triggered by legally deficient service of complaint). Patent Owner has not provided evidence of proper service with respect to either of the STMicro entities named in the 2020 Action. Accordingly, even if Patent Owner could show that these entities were in fact RPIs of Petitioner (which Patent Owner cannot as discussed below), the failure to show legally effective service dooms Patent Owner’s § 315(b) argument, which provides yet another reason to deny its motion for discovery.

Patent Owner provides no evidence of service regarding STMicroelectronics S.R.L. (in Italy). Patent Owner relies instead on STMicroelectronics N.V., which according to Patent Owner, is the “global parent entity” for STMicro. (Sur-Reply,

Paper 37, at 24.) But the only evidence of service offered with respect to STMicroelectronics N.V. is a hotly contested June 12, 2020 "Affidavit of Service" via Corporation Service Company ("CSC") in Albany, NY. (Motion, at 4; EX2013.) One week after it filed the Affidavit of Service, Patent Owner notified the district court that CSC had provided a "Rejection of Service of Process" dated June 15, 2020, explaining that service on STMicroelectronics N.V. could not be effected. (EX1068.) STMicroelectronics N.V. subsequently argued, in support of a pending motion to dismiss for failure of service, that the June 12, 2020 affidavit "was insufficient because [CSC] is not authorized to accept service for patent-infringement lawsuits." (EX1069, at 2.)[1]

Although the district court did not rule on the motion to dismiss filed by STMicroelectronics N.V. before it was dismissed from the action, subsequent events strongly suggest that its arguments about improper service were meritorious. For example, on November 30, 2020, Patent Owner filed a request in the 2020 Action for issuance of an "Amended Summons" against STMicroelectronics N.V., which the district court clerk issued the same day. (EX1070, EX1071.) The fact that Patent

[1] The brief filed by STMicro also argued that Patent Owner ineffectively attempted service by sending the complaint to a Netherlands address via UPS. (EX1069, at 2-3.) Patent Owner's motion no longer attempts to rely on this attempted service.

Owner requested an Amended Summons for STMicroelectronics N.V. provides strong evidence of an acknowledgement by Patent Owner of the deficiencies with its previous attempts at service, and further indicates that Patent Owner was intending to attempt service on STMicroelectronics N.V. again. *See* Fed. R. Civ. P. 4(c)(1) ("A summons must be served with a copy of the complaint."). But there is no evidence of any attempt to serve the amended summons and complaint on STMicroelectronics N.V. In fact, just five days after the Amended Summons was issued, Patent Owner voluntarily dismissed its case against STMicroelectronics N.V. (EX1072.) Accordingly, Patent Owner's reliance on the Affidavit of Service on STMicroelectronics N.V. (EX2013) is not only insufficient, but subsequent events in the district court indicate that this entity was not properly served as required by § 315(b). Patent Owner's motion for discovery should therefore be denied.

Finally, Patent Owner appears to have abandoned previous arguments about proper service. But even if considered, they fare no better. The Patent Owner Response, for example, asserted that STMicroelectronics N.V. and STMicroelectronics S.R.L. were "served under the Hague Convention," citing "D.I. 33 at 7, 2 fn. 2" from the 2020 Action. (POR, Paper 21, at 62 & n.3.) This argument was not renewed in Patent Owner's motion for discovery or its sur-reply. As explained in Petitioner's reply brief, that citation merely refers to hearsay statements in Patent Owner's own brief filed in the 2020 Action—again failing to provide any

actual (and admissible) evidence of successful service. (Reply, at 24 n.3.)

B. Patent Owner Cannot Show that STMicro Was an RPI.

Patent Owner's request for discovery should also be denied because, even if granted, Patent Owner cannot show that any STMicro entity is an RPI of Petitioner. The sole basis for Patent Owner's speculation regarding RPI status is a supplier agreement between Petitioner and a STMicroelectronics entity that was not sued in the 2020 Action. But such an agreement would not show an RPI relationship. The Director has held, for example, that unilateral requests for indemnification under a conventional supplier agreement do not show an RPI relationship. *See Luminex Int'l. Co., Ltd. v. Signify Holdings B.V.*, IPR2024-00101, Paper 20 at 11-13 (PTAB Nov. 21, 2024) ("[A] customer-indemnitee's request for indemnification by a manufacturer-indemnitor under a standard, non-exclusive, manufacturer-customer indemnification agreement relating to patent infringement [cannot] be sufficient to support a finding of real party in interest and trigger the one-year time bar."); *see also, e.g.*, *ASSA ABLOY AB v. CPC Patent Techs. Pty.*, IPR2022-01094, Paper 19 at 24 (PTAB Feb. 2, 2023) ("[T]he Board has held repeatedly that an indemnification agreement, without something more, is insufficient to establish a RPI relationship.")

The additional discovery requested by Patent Owner would not change the underlying facts that conclusively negate any RPI relationship between STMicro and Petitioner. Patent Owner offers no evidence of any coordination between Petitioner

and any STMicro entity – because no such evidence exists. Petitioner is not receiving indemnification from any STMicro entity, and no STMicro entity had any involvement in the preparation or prosecution of the IPR petition. (EX1073, ¶¶ 2-3.) As such, Petitioner alone was responsible for all tasks relating to this IPR, including locating prior art, retaining and compensating expert witnesses, preparing the IPR papers, and all post-institution tasks including taking and defending depositions and the oral hearing in this case. Petitioner received no input from any STMicro entity on any aspect of this IPR, and Petitioner is receiving no support (financial or otherwise) from any STMicro entity relating to this IPR petition.

IV. THE REQUESTED DISCOVERY IS UNWARRANTED

Even if Patent Owner could overcome all the reasons why its § 315(b) argument would fail, the requested discovery should be rejected. The facts indicate that a RPI relationship between Petitioner and the STMicro entities is not present, so Patent Owner's requested discovery would be a waste of time and resources. Accordingly, Patent Owner's motion should be denied. *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 26 at 6 (PTAB Mar. 5, 2013) ("The party requesting discovery should already be in possession of evidence tending to show beyond speculation that in fact something useful will be uncovered.")

V. CONCLUSION

Based on the above, Patent Owner's motion should be denied.

Dated: May 23, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. Section 42.6, that a complete copy of the attached **PETITIONERS' OPPOSITION TO PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY** and related documents, are being served via electronic mail on the 23rd day of May, 2025, upon Patent Owner by serving Patent Owner's counsel of record in this proceeding as follows:

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Dated: May 23, 2025

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