

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE FOR
INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE

TIKTOK, INC.,¹

Petitioner,

v.

CELLSPIN SOFT, INC.,

Patent Owner

IPR2024-00757 (Patent 8,756,336 B2)
IPR2024-00759 (Patent 8,862,757 B2)
IPR2024-00760 (Patent 8,898,260 B2)
IPR2024-00767 (Patent 11,659,381 B2)
IPR2024-00768 (Patent 11,234,121 B2)
IPR2024-00769 (Patent 9,900,766 B2)
IPR2024-00770 (Patent 8,904,030 B2)

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.*

PATENT OWNER'S ADDITIONAL BRIEF

¹ LifeScan, Inc., Senseonics Holdings, Inc., and Ascensia Diabetes Care Holdings AG have been joined as petitioners to IPR2024-00768, IPR2024-00769, and IPR2024-00770. Unless otherwise noted, citations herein are to papers and exhibits in IPR2024-00757.

I. Introduction

This Additional Brief responds to the Director’s Order [Paper 38] and addresses the two questions identified therein: (1) whether the evidence Patent Owner Cellspin Soft, Inc. (“Cellspin”) submitted is sufficient to place Petitioner’s real-party-in-interest (“RPI”) identification into dispute; and (2) what effect, if any, the announced TikTok USDS Joint Venture LLC has on these proceedings.²

As explained below, Cellspin satisfied its burden under *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237 (Fed. Cir. 2018), to place RPI squarely into dispute. As such, the burden has shifted to Petitioners to affirmatively establish that all RPIs were, in fact, properly identified. Petitioners, however, failed to provide the clarity required by 35 U.S.C. § 312(a)(2). Under the Director’s recent decision in *Yangtze Memory Technologies Co. v. Micron Technology, Inc.* (“YMTC”), IPR2025-00098, -00099, Paper 38 (January 15, 2026), that failure is fatal and requires vacatur of institution.

The announced joint venture does not alter this conclusion, inasmuch as RPI and institution are assessed based on the facts existing at the time the petitions were filed. Subsequent corporate restructurings or operational reallocations cannot retroactively cure a failure to comply with § 312(a)(2). Moreover, any correction

² The Director’s Order (at 3) cites and links to TikTok’s public announcement regarding the TikTok USDS Joint Venture. Patent Owner’s analysis addresses the substance of that announcement as publicly available at the time the Director issued the Order. As of the date of submission of this Additional Brief, the link as cited is no longer available. Inasmuch as public webpages may be modified or relocated, Patent Owner relies on the version as it existed on the date of the Order.

would necessarily result in a new filing date, which would be time-barred under 35 USC § 315(b).

II. Governing Legal Standard

As provided in 35 USC § 312(a)(2), an *inter partes* review petition may be considered “only if” it identifies “all real parties in interest.” This requirement is a statutory prerequisite to institution. *Corning Optical Commc’ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00441, Paper 47 (PTAB June 9, 2015) (precedential). Indeed, as the Director reaffirmed in *YMTC* (at 6), a petitioner’s failure to provide clarity as to its actual identity requires vacatur of institution and denial of the petitions.

A patent owner need only present “some evidence” sufficient to place RPI into dispute. *Worlds*, 903 F.3d at 1243-44. Once that showing is made, the burden shifts to the petitioner to affirmatively demonstrate that all RPis were properly identified. Failure to provide clarity is fatal. *YMTC* at 6 (“In short, Petitioner’s failure to provide clarity as to its actual identity is fatal to its petitions”), *id.* at 8 (Petitioner bears the burden of persuasion).

III. Cellspin Properly Placed RPI into Dispute

Cellspin satisfied its burden to place real-party-in-interest into dispute. In its Motion to Terminate, Cellspin presented evidence that Petitioner ByteDance is subject to governance and decision-making influence through the Chinese

Communist Party’s ownership of a so-called “golden share,” including rights associated with board participation and veto authority over certain corporate actions. *See* Paper 22 [IPR2024-00757 unless noted otherwise] at 2-3 [and Exh. 2025]. Cellspin further identified overlapping ownership, control, and economic alignment among TikTok, ByteDance, and affiliated entities that stood to benefit from invalidation of the challenged patents. *Id.* at 6-7 [and Exh. 2024]. Under *Worlds Inc. v. Bungie, Inc.*, this evidence was sufficient to place RPI into dispute and shift the burden to Petitioner.

In placing RPI into dispute, Cellspin relied on multiple independent categories of evidence cited in its Motion to Terminate, including U.S. court findings in *TikTok Inc. v. Garland* addressing ByteDance’s governance and susceptibility to CCP influence; publicly reported “golden share” governance rights held by the Chinese government; and U.S. government materials describing PRC laws that compel cooperation by Chinese firms. *See* Paper 22 at 1-7 [and Exh. 2024 at 2 and 6; Exhs. 2025-2028]. While such evidence is compelling, Cellspin does not ask the Director to adjudicate the ultimate merits of it here.

Once RPI was placed into dispute, § 312(a)(2) required Petitioners to affirmatively establish that all RPIs were identified in the petitions. Petitioners failed to do so. As the Director explained in *YMTC*, a petitioner’s failure to meaningfully address record evidence bearing on RPI by dismissing it and otherwise attempting

to answer extraneous questions rather than supplying clarifying responsive facts is fatal to institution.

To the extent Petitioners may contend that Cellspin's RPI evidence was raised "too late," such argument misunderstands the statutory inquiry. Real-party-in-interest identification is a condition of institution under § 312(a)(2), not a discretionary merits argument subject to forfeiture once evidence emerges, and it remains material whenever the Director is reconsidering institution. Cellspin raised the issue promptly once sufficient evidence became available, and in any event, once RPI is placed into dispute, the burden shifts to Petitioners to provide clarity as to their actual identity. Again, Petitioners did not identify the Chinese Communist Party, notwithstanding evidence placing CCP governance and control into dispute.

Moreover, and rather than clearly identifying all RPIs, Petitioners focused on arguing what they were not, relying in part on *SharkNinja Operating LLC v. iRobot Corp.* to contend that alleged RPI defects were non-dispositive. That reliance is misplaced. *SharkNinja* has since been de-designated as precedential, and the Director in *YMTC* expressly rejected the approach of excusing a lack of clarity once RPI has been placed into dispute. Petitioners did not provide affirmative, record-based clarity as to all entities that controlled, funded, or stood to benefit from the petitions at the time of filing or institution. As such, Petitioner has not carried its burden (nor can it), and vacatur is the only proper result.

IV. The Announced Joint Venture Has No Effect on These Proceedings

First, the inquiry under § 312(a)(2) is backward-looking. *See, e.g., Amazon.com v. Appistry*, IPR2015-00480, 2015 WL 4467407 at *2 (P.T.A.B.) (July 13, 2015). It asks whether the petition identified all RPIs at the time the petition was filed. Subsequent corporate restructurings or operational reallocations cannot retroactively alter that statutory analysis. *YMTC*.

Second, nothing in the **Joint Venture** announcement suggests a complete divestiture or transfer of ownership of the TikTok platform. Instead, the announcement describes a **limited** allocation of U.S.-specific **security and compliance functions**, including data security, software assurance, algorithm security, and trust-and-safety oversight for U.S. users. The announcement does **not** state that the Joint Venture owns or controls the TikTok platform as a whole or has responsibility for platform development or commercial operations.

To the contrary, TikTok expressly acknowledges that TikTok Global and ByteDance-affiliated entities continue to manage global product interoperability, code development, and core commercial activities. This allocation of responsibilities confirms that the Joint Venture's mandate is limited and forward-looking, and that it does not supplant TikTok Global or ByteDance-affiliated entities as the entities with continuing operational and economic interests in the platform for purposes of § 312(a)(2).

Third, the Joint Venture announcement does not attribute code development, feature design, product roadmap control, or backend/frontend engineering to the Joint Venture, functions that reflect control over the creation and operation of the accused technology. The announcement further confirms that monetization remains with TikTok Global and ByteDance-affiliated entities, which manage advertising, e-commerce, and marketing. Those revenue-generating activities represent the economic exploitation of the accused technology and identify the entities that stood, and continue to stand, to benefit from invalidation of the challenged patents.

A. Security and Compliance Oversight Does Not Alter the § 312(a)(2) Analysis

For RPI purposes, the relevant inquiry is which entities directed the development and commercialization of the accused technology and derived economic benefit *at the time the petitions were filed*. Security and compliance oversight standing alone do not displace those entities as RPIs, nor can it retroactively supply the clarity required by § 312(a)(2). Again, nothing relating to the Joint Venture announcement has *any* bearing whatsoever on the failure to identify all RPI as of the date the petitions were filed.

B. The Joint Venture Does Not Cure the RPI Defect

Even accepting the joint venture announcement at face value, it does not provide the clarity required under § 312(a)(2). In fact, it confirms a fragmented structure in which the joint venture performs defined security and compliance

functions, while TikTok Global and ByteDance-affiliated entities control code development, interoperability, and revenue-generating commercial activities. This fragmentation underscores that the joint venture does not resolve the RPI problem that existed at the time of filing and institution. Again, the joint venture post-institution developments do not retroactively alter the threshold question of whether the petitions satisfied § 312(a)(2), nor do they supply missing clarity as to the identity of petitioner.

V. Consistency with *YMTC*

In *YMTC*, the Director held that where a petitioner fails to provide clarity as to its actual identity after RPI is placed into dispute, that failure is fatal and requires vacatur of institution. The same principle applies here. Applying a different rule would undermine § 312(a)(2)'s gatekeeping function.

VI. Conclusion

Cellspin satisfied its burden to place RPI into dispute. Petitioners failed to carry their burden to affirmatively establish that all RPIs were identified. Under § 312(a)(2), *Corning Optical*, and *YMTC*, institution must be vacated and the petitions denied. The announced joint venture has no effect on that analysis.

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Date: February 2, 2026

Respectfully submitted,

By: M. Scott Fuller
M. Scott Fuller (Lead Counsel)
Reg. No. 54,716

Counsel for Patent Owner

CERTIFICATION OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(b), the undersigned certifies that on February 2, 2026, a copy of the foregoing document was served by electronic mail on the following:

For Petitioner

W. Karl Renner
Kim H. Leung
Baile Xie
Ricardo J. Bonilla
Steven Katz
Rishi Gupta
Ryan O'Connor
FISH & RICHARDSON P.C.
axf-ptab@fr.com
leung@fr.com
xie@fr.com
rbonilla@fr.com
katz@fr.com
rgupta@fr.com
oconnor@fr.com

For Joined Petitioner in IPR2024-00768, -769, -770

Charles M. McMahon
Thomas M. DaMario
BENESCH FRIEDLANDER COPLAN & ARONOFF LLP
cmcmahon@beneschlaw.com
tdamario@beneschlaw.com

Joseph A. Hynds
Michael Battaglia
ROTHWELL, FIGG, ERNST & MANBECK, P.C.
jhynds@rfem.com
mbattaglia@rfem.com

Dated: February 2, 2026

By: M. Scott Fuller
M. Scott Fuller (Lead Counsel)
Reg. No. 54,716
René A. Vazquez (Backup Counsel)
Reg. No. 38,647

Counsel for Patent Owner