

PATENT TRIAL AND APPEAL BOARD

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RE: IPR2024-00757, 759, 760, 767, 768, 769, 770

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REPORTER'S TRANSCRIPT

of

PROCEEDINGS

of the

TELEPHONIC CONFERENCE

held on

TUESDAY, MARCH 18, 2025

11:30 A.M.

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A P P E A R A N C E S:

PATENT TRIAL AND APPEAL BOARD PANELISTS:

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Administrative Patent Judge

U.S. Patent and Trademark Office

HON. MICHAEL VALEK (TELEPHONIC)

Administrative Patent Judge

U.S. Patent and Trademark Office

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P R O C E E D I N G S

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Whereupon,

JUDGE HARDMAN: So let's go on the record, please. Again, it's Judge Hardman. That's H-A-R-D-M-A-N, and I'm joined here today by Judges Anderson and Valek.

This is a conference call for seven proceedings, and I'm going to read out the names of the proceedings or the numbers.

They are IPR2024-00757, 759, 760, 767, 768, 769 and 778. So let's start with appearances.

For patent owner, who do we have on the line today, please.

MR. VAZQUEZ: Good morning, Your Honor, my name is Rene Vazquez, and I'm appearing for patent owner Cellspin Soft.

JUDGE VALEK: Okay. Thank you. Welcome, Mr. Vazquez.

And who do we have for Petitioner, please.

MR. GUPTA: Good morning, Judge Hardman. This is Rishi Gupta, G-U-P-T-A, on behalf of Petitioner. And joining me also on behalf of Petitioner are Kim Leung, L-e-u-n-g, and Karl

1 Renner, R-E-N-N-E-R.

2 JUDGE HARDMAN: Thank you, Mr. Gupta.

3 Do we have any representatives for the
4 joined petitioners in the 768, 769 and 770
5 cases?

6 MR. McMAHON: This is Charles McMahon from
7 Benesch, representing joined petitioner Life
8 Span.

9 JUDGE HARDMAN: Welcome, Mr. McMahon.
10 Okay.

11 Mr. Vazquez, is patent owner the party
12 that contracted the court reporter?

13 MR. VAZQUEZ: Your Honor.

14 JUDGE HARDMAN: Okay.

15 Upon receiving the transcript, will you
16 please file it in this case as an exhibit in
17 each of these affected IPR's?

18 MR. VAZQUEZ: Of course, Your Honor.

19 JUDGE HARDMAN: Thank you.

20 Now, just to remind everybody, if you
21 could please mute your line when you are not
22 speaking so that we can minimize any noise on
23 the line, and also, please, if you do start
24 speaking, please state your name so we can have
25 a clean record.

1 Now, we convened this call in response to
2 Patent Owner's request for authorization to
3 file a motion to terminate these proceedings,
4 and Patent Owner is contending that Petitioner
5 failed to name a real party in interest;
6 namely, the Chinese Communist Party or CCP, and
7 that cases should be terminated pursuant to the
8 Return Mail case out of the Supreme Court; so
9 let's start with Mr. Vazquez or whoever is
10 speaking on behalf of Patent Owner.

11 Can you please give us a brief overview of
12 your position and the motion or motions that
13 you're seeking to file.

14 MR. VAZQUEZ: Yes, thank you, Your Honor.
15 Rene Vazquez here for Patent Owner.

16 Your Honor, as you indicated, yes, we did
17 request this call to obtain permission from the
18 board to file a motion to terminate the
19 proceedings and vacate the decision on
20 institution in each of the seven related IPR's.

21 There are two bases that we're bringing
22 for this request. The first basis is
23 Petitioner Tik-Tok's failure to name the CCP,
24 the Chinese Communist Party, as a real party in
25 interest.

1 And then we feel there's a second related
2 basis which is obviously related to a
3 determination of whether the Chinese Communist
4 Party is a real party in interest, which is
5 based on the Supreme Court ruling in Return
6 Mail vs. United States Postal Service, which
7 held that an entity controlled by a sovereign,
8 in this case the CCP, may not qualify as,
9 quote, persons eligible to challenge a patent
10 via an administrative proceeding such as an
11 IPR.

12 Now, Your Honor, as you know, in the case
13 of Applications in Internet Time vs. RPX
14 Corporation, the Federal Circuit stated that,
15 quote, determining whether a non-party is a
16 real party in interest demands a flexible
17 approach that takes into account both equitable
18 and practical consideration with an eye towards
19 determining whether the non-party is a clear
20 beneficiary that has a pre-existing established
21 relationship with the petitioner.

22 Now, with regards to Petitioners Tik-Tok
23 and its corporate parent ByteDance, its
24 relationship with the CCP, I'm going to start
25 with quotes from Congressman Raja

1 Krishnamoorthi of Illinois and Congressman John
2 Moolenaar of Michigan.

3 Congressman Moolenaar was the Chairman of
4 the House Select Committee on the strategic
5 competition between the United States and the
6 Chinese Communist Party, but Congressman
7 Krishnamoorthi was a ranking member of that
8 same select committee.

9 Now, on December 6, 2024, after the D.C.
10 Circuit Court upheld the Protecting Americans
11 from Foreign Adversary Controlled Applications
12 Act, the Congressmen issued a joint press
13 release.

14 In that press release, Congressman
15 Krishnamoorthi stated, quote, "With today's
16 opinion, all three branches of government have
17 reached the same conclusion. ByteDance is
18 controlled by the Chinese Communist Party, and
19 Tik-Tok's ownership of ByteDance is a national
20 security threat" end quote.

21 He went on to say also that quote, "Every
22 day Tik-Tok remains under the Chinese Communist
23 Party's control is a day that our security is
24 at risk," close quote.

25 For his part, Congressman Moolenaar

1 stated, quote, "Today's ruling is a loss for
2 the Chinese Communist Party, which will no
3 longer be able to exploit Byte-Dance's control
4 over Tik-Tok to undermine our sovereignty,
5 surveille our citizens and threaten our
6 national security."

7 So, Your Honor, we will be, if we are
8 given leave to file a motion, we will be
9 submitting evidence that was submitted in, for
10 example, in the Tik-Tok, Inc. vs. ByteDance --
11 I'm sorry, Tik-Tok, Inc. et al. vs. Merrick
12 Garland case, which was heard by the U.S. Court
13 of Appeals for the District of Columbia.
14 Tik-Tok was challenging the constitutionality
15 of the Protecting Americans from Foreign
16 Adversary Controlled Applications Act in that
17 case.

18 The Court affirmed, maintained the
19 constitutionality of that Act, and in doing so
20 made the following findings: Quote, "According
21 to the government's declarant, even putatively
22 private companies based in China do not operate
23 with independence from the government and
24 cannot be analogized to private companies in
25 the United States."

1 They also found that the People's Republic
2 of China maintains a powerful Chinese Communist
3 Party committee embedded in ByteDance through
4 which it can exert its will on the company.

5 Now, as of 2022 that committee was headed
6 by the company's chief editor and employed at
7 least 138 employees at its Beijing office,
8 including senior company managers.

9 The Supreme Court subsequently affirmed
10 the Court of Appeals decision with regard to
11 the constitutionality of the Act. And they
12 also affirmed the control dynamic between the
13 CCP, ByteDance and Tik-Tok, by stating that,
14 quote, Congress acted within its authority to
15 regulate foreign commerce by addressing the
16 risks posed by a Chinese-controlled entity
17 operating a major platform in the United
18 States.

19 In addition to evidence from these cases
20 that we would be submitting, we'll also be
21 submitting evidence from USCourts.Gov Filing,
22 and press reports that confirm that the CCP
23 acquired a one percent equity stake in
24 ByteDance's primary Chinese subsidiary Beijing
25 ByteDance Technology Company.

1 Now, this share or equity interest is
2 referred to as a golden share, and it gives the
3 CCP the power to appoint one of the three board
4 members in the Beijing ByteDance Technology
5 Company's board.

6 The director chosen was Wu Shu Gang, who
7 is the party's secretary of the Communist Youth
8 League under the Ministry of Education. This,
9 quote, "Golden share" also gives the CCP veto
10 power over key business decisions.

11 JUDGE VALEK: Counsel, this is Judge
12 Valek. I'm going to interrupt you for a
13 moment.

14 I'm just trying to get an accounting at
15 this point of the evidence that you would like
16 to submit if we were to grant your request to
17 file a motion here; and so if you could, could
18 you just kind of, without getting into the
19 substance of the evidence, just describe the
20 evidence you want to submit and where it's
21 coming from.

22 MR. VAZQUEZ: Yes, your Honor, in these
23 cases, specifically the Tik-Tok, et al. vs.
24 Merrick Garland case, the government submitted
25 numerous exhibits and there was also

1 declaration testimony from the government.

2 In addition, I will be submitting evidence
3 from the case, Tik-Tok vs. Trump. That was
4 decided by the U.S. District Court for the
5 District of Columbia back in December of 2020.

6 Now, in this case, President Trump issued
7 an executive order designed to shut down
8 Tik-Tok's operations in the United States. And
9 Tik-Tok challenged whether or not President
10 Trump's executive powers were being exceeded in
11 that case.

12 But during the course of that case, again,
13 there was evidence submitted by the government,
14 including an internal memorandum sent to the
15 Secretary of Commerce.

16 That internal memorandum was discussing
17 proposed prohibitions that would go into place
18 if President Trump's executive order was to be
19 allowed.

20 That internal memorandum includes quite a
21 bit of evidence obtained by the government
22 regarding the CCP's influence on ByteDance, the
23 number of CPC members employed in management
24 positions at ByteDance; so that's some of the
25 evidence here that we intend to submit.

1 JUDGE HARDMAN: Thank you.

2 JUDGE VALEK: I'm sorry.

3 JUDGE HARDMAN: Go ahead.

4 JUDGE VALEK: Mr. Vazquez, this is Judge
5 Valek again.

6 As I understand it, you want to submit
7 evidence or filings, perhaps some finding from
8 the two other cases.

9 Is there any additional evidence outside
10 of that that you intend to submit if your
11 request is granted?

12 MR. VAZQUEZ: Well, your Honor, we would
13 also request some discovery on this issue.
14 That with regards to, you know, for example, we
15 would serve some interrogatories directed at
16 determining how many current CCP members sit on
17 ByteDance's board. That is an example.

18 And any evidence collected as a result of
19 that discovery would also be submitted.

20 JUDGE VALEK: So you're asking for certain
21 additional discovery in these proceedings; is
22 that correct?

23 MR. VAZQUEZ: Correct, Your Honor.

24 JUDGE VALEK: And that additional
25 discovery consists of some interrogatories.

1 Are you asking for witness testimony?

2 MR. VAZQUEZ: No, we're not asking for
3 witness testimony, your Honor, just the
4 interrogatories.

5 JUDGE VALEK: Are you asking for any
6 document discovery?

7 MR. VAZQUEZ: Possibly, yes, Your Honor,
8 we would like to have that option as well.

9 JUDGE VALEK: I understand you'd like to
10 have that option, but you understand that we're
11 under a statutory deadline in these
12 proceedings. It's a little bit different from
13 a District Court. And that this particular has
14 come very late in these proceedings. We're
15 about six months out from the statutory
16 deadlines.

17 And this argument hasn't been raised
18 previously; so we're under a time constraint
19 here; and so I'm trying to understand the scope
20 of the ask here so that we can make a reasoned
21 decision on that.

22 MR. VAZQUEZ: Your Honor, we'll be filing
23 interrogatories in that case.

24 JUDGE VALEK: And when you say
25 interrogatories, how many interrogatories are

1 we talking about, approximately?

2 MR. GUPTA: Approximately 10.

3 JUDGE VALEK: So as I understand the
4 universe of evidence, we have evidence and
5 findings from two other lawsuits and then
6 additional discovery in the form of
7 approximately 10 interrogatories in these
8 proceedings. Is that it?

9 MR. VAZQUEZ: Correct, Your Honor.

10 JUDGE VALEK: Okay.

11 JUDGE HARDMAN: I think, Mr. Vazquez, part
12 of the existing information from the prior
13 lawsuits you mentioned were some declarations.
14 What is your view on whether you would be able
15 to make those declarants available for
16 cross-examination, or are you just intending to
17 put the declarations in the record with no
18 ability to put the declarants up for
19 cross-exam?

20 MR. VAZQUEZ: It would be the latter, Your
21 Honor. I don't imagine, especially given the
22 time constraints, that we would be able to, (a)
23 secure -- yeah, secure depositions from any of
24 these government declarants.

25 JUDGE VALEK: Let me ask a follow-up --

1 Judge Valek again -- on that particular point.

2 How are we supposed to deal with that?
3 You started off by talking about, for example,
4 a statement from a Congressman to the press,
5 which would seem to have the problems with
6 respect to admissibility, not the least of
7 which is hearsay; so how should deal with the
8 submission of witness testimony when there
9 hasn't been any opportunity to cross-examine
10 those witnesses by either side?

11 MR. VAZQUEZ: Well, Your Honor, those
12 witnesses were presumed cross-examined during
13 those cases by Tik-Tok, so I would point that
14 out.

15 The petitioner here has had an opportunity
16 to cross-examine those witnesses. Really in an
17 issue that is not -- not very much -- very much
18 similar to the issue before the board here,
19 which is the extent of influence of the CCP on
20 TikTok.

21 And in those cases it involved national
22 security concerns. In this case it involves
23 the influence of the CCP on administrative
24 patent proceedings, but the underlying premise,
25 that is undue influence by the CCP is the same.

1 And those declarants were cross-examined during
2 those cases.

3 JUDGE VALEK: And so you as the movant and
4 ultimately the one that would have to show
5 admissibility of evidence, are comfortable
6 arguing that there's some sort of exception to
7 hearsay under the Federal rules that would be
8 applicable here for the evidence that you're
9 intending to submit; is that correct?

10 MR. VAZQUEZ: Yes, Your Honor.

11 And just to be clear, declarant testimony
12 will not be the only evidence submitted. We
13 would cite to these cases for the findings of
14 the Court, the findings of fact and conclusions
15 that the Court came to; so not unlike -- well,
16 we would cite the tax court cases in our
17 arguments for patentability, for example; so to
18 the extent that we use declaration testimony
19 from a government declarant, then yes, Your
20 Honor, we would include what I already
21 mentioned with regards to the admissibility of
22 that evidence.

23 JUDGE HARDMAN: This is Judge Hardman.

24 So what I'm understanding then, you
25 pattern the first means authorization for a

1 motion to obtain additional discovery. And
2 then assuming you successfully obtained that
3 discovery, then you would be in a position to
4 file a motion to terminate.

5 Am I understanding correctly that we need
6 really two periods of motion practice here,
7 first for the discovery and second for the
8 briefing on any motion to terminate?

9 MR. VAZQUEZ: That's correct, Your Honor.
10 But Your Honor, I would say, I don't want to
11 tie -- I don't want our request for the motion
12 to terminate to rise or fall on your decision
13 as to discovery.

14 I mean, we're prepared to move on the
15 motion to terminate without additional
16 discovery; so it's not a situation where we
17 feel we require that discovery to move forward,
18 but we do feel that it would be very helpful
19 and advantageous to have that discovery, but
20 yes.

21 JUDGE HARDMAN: Have you done any meeting
22 or conferring with petitioner in terms of the
23 information that you would request in
24 interrogatories? Have you already asked for
25 that information to see if that would be

1 something the parties could work out
2 independent of motion practice?

3 MR. VAZQUEZ: Well, I have not, Your
4 Honor, but of course I'm happy to do so as soon
5 as possible.

6 JUDGE HARDMAN: In terms of the co-pending
7 litigation in Texas, did patent owner seek to
8 join the CCP, the party to that litigation?

9 MR. VAZQUEZ: I'm sorry, Your Honor, I
10 don't quite understand the question.

11 JUDGE HARDMAN: Well, let me step back and
12 ask. Was patent owner involved in a litigation
13 in Texas with Tik-Tok on any or all of these
14 same patents at issue here?

15 MR. VAZQUEZ: Yes, Your Honor.

16 JUDGE HARDMAN: And did this issue come up
17 in that case? Meaning, did patent owner seek
18 to join the CCP as a party, a necessary party
19 in that case at all?

20 MR. VAZQUEZ: No, Your Honor.

21 JUDGE VALEK: Counsel, this is Judge
22 Valek. Why not?

23 MR. VAZQUEZ: Your Honor, I'm not
24 litigation counsel for those cases. I would
25 have to consult with litigation counsel on that

1 question. I do not know the answer to that.

2 JUDGE HARDMAN: It's Judge Hardman again.

3 It seems that all of the information that
4 you have discussed in prior cases and the
5 Congressman press release, et cetera, have
6 existed for quite some time; so why are we so
7 late into this proceeding that this issue is
8 just coming up now?

9 MR. VAZQUEZ: Your Honor, what prompted
10 this was honestly patent owner, there was a Fox
11 News report in January, that discussed these
12 what they call secret golden shares that the
13 CPC owns in ByteDance and are used to control
14 ByteDance and TikTok.

15 That press release is what prompted patent
16 owner to do further research on this issue.
17 And that's when we kind of amassed all of the
18 evidence, some of which I have discussed with
19 you today. It was kind of kick-started by that
20 news article that we happened to see.

21 JUDGE HARDMAN: Unless my co-panelists
22 have any additional questions at this juncture,
23 I'm going to turn it over to petitioner.

24 JUDGE VALEK: Before we do -- this is
25 Judge Valek. I have just a couple of

1 follow-ups on that.

2 So Mr. Vazquez, we have already passed the
3 point where you filed your patent owner
4 responses in these cases; right?

5 MR. VAZQUEZ: Correct.

6 JUDGE VALEK: And you're saying that there
7 was a news report sometime in January, and
8 based upon that news report, that prompted you
9 to go out and do some additional research, and
10 you have uncovered this, I guess,
11 publically-available information in these cases
12 that you discussed earlier; is that correct?

13 MR. VAZQUEZ: That's correct, your Honor.

14 JUDGE VALEK: And the request now to file
15 this motion came in March, and here we are, I
16 think, a week or so later on this particular
17 call. Why didn't you present this argument
18 earlier in your response?

19 MR. VAZQUEZ: Your Honor, we were not made
20 aware. I was not made aware. Patent owner did
21 not come to us, to Counsel, with this
22 information until after the response was filed.

23 I guess my understanding is that he was
24 doing his own research on this. And once he
25 determined that he had found enough evidence

1 here, then he made us aware of this.

2 And we, you know, we took into
3 consideration of our own research, but we were
4 not made aware of patent owner's desire to
5 pursue this issue until after patent owner's
6 response had been filed.

7 JUDGE VALEK: But why we shouldn't we
8 consider the failure to raise that in the
9 response a waiver?

10 MR. VAZQUEZ: Well, Your Honor, I would
11 say this was not a situation where counsel for
12 patent owner was aware of this issue and
13 decided, well, we're just not going to bring it
14 up in our response. We were not aware of this
15 issue.

16 And patent owner, you know, was doing some
17 of his own in-the-background research on this
18 and didn't make us aware of it until after the
19 impact or the response was filed; so there was
20 no intentional, you know, intentional waiver of
21 this argument.

22 JUDGE VALEK: No intent, but how should
23 that be any different than any other instance
24 where there's some sort of breakdown in
25 communication between a client and IPR counsel

1 which results in an argument not timely making
2 it into a response?

3 MR. VAZQUEZ: Well, Your Honor, I think
4 frankly the issues brought up here, the
5 seriousness, I think, of this in our view I
6 think should give us a little bit of leeway
7 here.

8 And I'm sure that, you know, these are
9 serious issues here. I'm sure the patent owner
10 wanted to be sure before he even made us aware
11 of this, that this is something that would be
12 worth pursuing.

13 And I would ask the board to consider the
14 seriousness of this in terms of the potential
15 control that's going on here by the CCP on U.S.
16 Patent administrative proceedings.

17 JUDGE HARDMAN: Counsel, Judge Hardman
18 again.

19 Another question, on the Return Mail case
20 point, do you have other cases that follow on
21 Return Mail that are a little bit closer in
22 circumstance to what we have here, where it's
23 an RPI. Is it a sovereign, an alleged RPI is a
24 sovereign? Is there any case law that's a
25 little closer to our fact pattern?

1 MR. VAZQUEZ: I'm not aware of that at the
2 moment, Your Honor.

3 JUDGE VALEK: And this is Judge Valek. I
4 have one more question.

5 Is there any sort of time bar issue here?
6 Normally, when we're talking about IPRs, the
7 issues are either there's some sort of
8 estoppel, you want to make sure that whatever
9 decision we have with the estoppel applies to
10 not just the petitioner but all the real
11 party's interests, and then the other concern
12 we have is there a time bar issue under 315,
13 where a real party in interest is time barred,
14 and really, they're using the petitioner to
15 bring an IPR, a PGR that they couldn't
16 otherwise. Do we have any of those issues
17 here?

18 MR. VAZQUEZ: Well, there's no issue where
19 the CCP has not been -- there's no time bar
20 vis-a-vis the CCP.

21 The CCP has not been sued. They have not
22 been brought in as party, as I mentioned
23 earlier, in the litigation; so there's no time
24 bar vis-a-vis the proposed real party in
25 interest, the CCP.

1 JUDGE VALEK: Thank you, Counsel.

2 JUDGE HARDMAN: Why don't we turn it over
3 to Mr. Gupta and hear from petitioner.

4 I guess just a sort of base level
5 question. Does petitioner dispute that the CPC
6 is a real party in interest?

7 MR. GUPTA: I actually don't know if I can
8 answer that question, mainly because in our
9 preparation today for this call, we had focused
10 our attention primarily on the question of
11 whether the Board should grant a motion to
12 terminate based on failure to identify an RPI
13 in the Return Mail case; so, you know, we would
14 be remiss, to be honest, to even come close to
15 answering that question during this call.

16 The thing that I would want to say -- I'll
17 just pause there just to see if you have a
18 response to that.

19 But I think that the question here really
20 turns on whether Return Mail is standing for
21 the proposition that any sovereign in control
22 of a company is barred from bringing a
23 post-grant challenge. And the answer to that
24 question is no.

25 The Return Mail case is about whether the

1 United States government as a sovereign is a
2 person under the AIA, but the United States
3 government can bring a challenge, and if we
4 look at Justice Sotomayor's analysis --

5 JUDGE VALEK: Mr. Gupta, Mr. Gupta, this
6 is Judge Valek. Before you go on.

7 MR. GUPTA: Sure.

8 JUDGE VALEK: I agree with you that that's
9 one of the questions. But I don't think it's
10 the only one.

11 And certainly if there is, you know,
12 potentially, there's a question of whether or
13 not the CCP is an RPI or not, and the answer to
14 that question is no; then we don't even get to
15 Return Mail, right, because their whole theory
16 falls apart.

17 In addition to that separate, and I think
18 that Mr. Vasquez pointed this out, trying to
19 make two arguments, and one is that you had not
20 complied with your duty as petitioner to
21 identify all the real parties in interest which
22 would exist regardless of Return Mail; and so
23 the question I believe Judge Hardman wanted to
24 establish for the foundation, is there a
25 dispute here as to whether the CCP is a real

1 party in interest, and if you're not disputing
2 that point, why haven't you identified them.

3 MR. GUPTA: Okay. So we do dispute that
4 CCP is a real party of interest; so we didn't
5 include them because they are not an RPI; and
6 so this issue is, you know, really not
7 something that really needed to be explored
8 further in that sense; so we didn't list the
9 CCP as an RPI in our petition.

10 JUDGE VALEK: And just to follow up --
11 this is Judge Valek again. If we were to grant
12 the patent owner's request for briefing on
13 this, we can assume that you would oppose, sort
14 of, that initial argument they're making that
15 CCP is a real party in interest, and that the
16 evidence that they've proposed to put forward,
17 that that shows that. You're planning to
18 oppose that if we were to grant this motion
19 request; correct?

20 MR. GUPTA: Yes, we would oppose that.
21 And I would also add that, you know, as this
22 board correctly already pointed out, there is
23 no theory of relief that, you know, that's
24 available to them under this RPI issue; so
25 there's no time bar under 315(d); there's no

1 collateral estoppel issues under 315(e).
2 Their only theory is under Return Mail; and so
3 even if after all the discovery and after all
4 the motion practice, if it winds up that we
5 were meant to list them as an RPI, termination
6 is not an appropriate outcome; so we would
7 oppose the motion purely on the fact that it's
8 very late in the proceeding. It would be
9 prejudicial and the outcome would be, you know,
10 there's no outcome that would actually be --
11 I'm sorry, the termination is not the correct
12 outcome so...

13 JUDGE HARDMAN: Could you elaborate on
14 your claim of prejudice. In what way is patent
15 owner's request here prejudicial to petitioner?

16 MR. GUPTA: Purely out of the lateness of
17 it.

18 First of all, we are already very late in
19 the proceeding. We are preparing our responses
20 to the POR. And, you know, we would actually
21 need to perform -- you know, responses to be
22 brought as well as the other motion practice,
23 pretty late in the trial; so in that way it's
24 prejudicial, simply just by the inconvenience
25 of it. We would consider it nothing more than

1 a fishing expedition. And again, the outcome
2 wouldn't change. You have a motion to
3 terminate based on the RPI is inappropriate.

4 JUDGE HARDMAN: Why don't you go into that
5 point a little bit more.

6 MR. GUPTA: Which point?

7 JUDGE HARDMAN: The termination under the
8 Return Mail case is not appropriate in any
9 event.

10 MR. GUPTA: Oh, so Return Mail -- so the
11 question of Return Mail is about whether the
12 United States government, the United States
13 Postal Service was a person under the AIA, and
14 the Supreme Court's analysis there focused
15 entirely on the United States government, and
16 the differences between the U.S. government and
17 non-governmental actors when it came to the
18 statutory construction of AIA in determining
19 who a person was; so the extension of the
20 sovereign, meaning the United States sovereign
21 or the enacting sovereign as the Vermont case
22 specified to the CCP, it's just an
23 inappropriate extension of that case law. It's
24 not meant to bar a non-U.S. governmental actor
25 from bringing a challenge; so even if it were

1 found that they weren't an RPI, it wouldn't
2 affect the outcome under Return Mail. They're
3 still able to bring a petition and there's no
4 time bar, and there's no estoppel as Counsel
5 has said already.

6 JUDGE HARDMAN: Is there case law talking
7 about how this extension of Return Mail is
8 inappropriate, or is that just something that
9 you are just arguing in the briefing?

10 MR. GUPTA: So I have looked at Return
11 Mail specifically, and we haven't seen cases
12 that extend Return Mail beyond the U.S.
13 government; so it's not -- I don't have a case
14 that says that it doesn't go beyond government.

15 It's just that when you look at the
16 analysis of the case, it's centered on the
17 United States government's the sovereign, but
18 it was a pretty narrow fact pattern discussing
19 specifically the U.S. Postal Service.

20 JUDGE VALEK: Counsel, this is Judge
21 Valek. I have kind of a question and I think
22 the answer may be no, we haven't looked yet,
23 but have you seen any decisions from the board
24 or other cases from the board where either the
25 U.S. government or a foreign government was an

1 RPI; so maybe there's a party that's
2 contracting with the government and it had to
3 list the government as the real party in
4 interest and then whether proceedings like that
5 has gone forward, where there's not just the
6 government agency as was the case in Return
7 Mail, but maybe also a non-governmental actor
8 who would qualify as a person under the AIA?

9 MR. GUPTA: I have no knowledge of that.

10 JUDGE HARDMAN: So let me ask a slightly
11 different question -- or a very different
12 question.

13 The legislation, the Protecting Americans
14 from Foreign Adversary Controlled Applications
15 Act, I understand that there was an executive
16 order pausing enforcement of that Act.

17 That pause was scheduled to be coming to
18 an end in early April. And do you have any
19 views on whether the, you know, if that pause
20 is lifted, whether that could have any impact
21 on the question of whether the CCP is an RPI or
22 not?

23 MR. GUPTA: I don't have a view on that
24 mainly because it would be entirely speculative
25 on my part.

1 I don't know what will happen after the
2 executive order is lifted -- or the ban is
3 lifted. I'm sorry, the pause, the pause is
4 lifted; so I don't know what happens.

5 I mean, there's nothing to say that this
6 pause can't be extended after that; so I'm
7 loathe to speculate on that kind of thing.

8 JUDGE HARDMAN: I guess to put a finer
9 point on it, if there is any divestiture or
10 change in ownership on the horizon for Tik-Tok,
11 that maybe would affect, you know, the issues
12 at play here, are you aware of anything that
13 might affect what we're doing here, if you're
14 at liberty to share that information?

15 MR. GUPTA: I'm not aware of any. I would
16 anticipate that, you know, looking backwards in
17 time, we, you know, the patent owner has raised
18 these concerns in the popper (phonetic) as well
19 as the hearing request, you know, with the
20 January 2025 date coming up, you know, and it
21 didn't change the stance the petitioner took in
22 these IPR's, and so -- I mean, again, I'm
23 loathe to speculate, but I would imagine that
24 the petitioner would, again, not change their
25 petition, you know, in light of a potential

1 lifting of the pause.

2 JUDGE HARDMAN: I guess I'm just trying to
3 parse that. I guess the legislation requires
4 that -- well, contemplated that TikTok
5 potentially changes ownership, maybe meaning
6 that if there is any involvement of the CPC,
7 perhaps that would be the end of it if the
8 owner should be changed; so is that on the
9 horizon at all as far as you know?

10 MR. GUPTA: Not as far as I know. Well, I
11 can't say. I don't actually know the answer to
12 that question.

13 JUDGE HARDMAN: Okay.

14 JUDGE VALEK: This is Judge Valek. Let me
15 ask it just a little bit different.

16 Are you asking for us to pause
17 consideration of the patent owner's request to
18 file a motion to terminate here based on the
19 timing of any negotiations that may be going on
20 for some other purpose?

21 In other words, I think that deadline's in
22 April or whatever. Are you asking that we just
23 kind of pause this until after that, or are we
24 ready to determine this right now?

25 MR. GUPTA: The petitioner isn't asking

1 for a pause in the IPR trial. We simply oppose
2 the motion to vacate and terminate based on the
3 two points that the patent owner raised in
4 their request for this meeting; so I mean --

5 JUDGE VALEK: Fair enough.

6 MR. GUPTA: Yeah.

7 JUDGE VALEK: Okay. I have kind of
8 another question that maybe you can answer.
9 What is the status of the District Court
10 litigation, the parallel action from Texas?
11 Are those proceeding forward? Have they been
12 stayed?

13 MR. GUPTA: They're stayed.

14 JUDGE VALEK: What is the current status
15 of that -- okay. They're stayed. The pending
16 outcome of the IPR.

17 MR. GUPTA: Yeah, that's right, pending
18 resolution of the IPR, the District Court
19 litigation stay.

20 JUDGE HARDMAN: Okay. Counsel, now that
21 you have heard that patent owner intends to
22 request interrogatories, do you have any view
23 on whether that is something that you think the
24 parties could come to agreement on outside of
25 motion practice?

1 MR. GUPTA: I would have to confer, but --
2 yeah, I would have to confer.

3 The client will not agree to discovery
4 without an order by the board. And we would,
5 of course, want to have the opportunity to file
6 opposing briefings on any discovery requests.

7 JUDGE HARDMAN: And having heard patent
8 owner's other -- the other types of evidence it
9 proposes to use, do you have any objections to
10 that type of evidence, sitting here today?

11 MR. GUPTA: We do. We would object to all
12 of this. I used to deal with a lot of
13 cataloging so maybe that was too broad a
14 statement, but certainly any evidence where we
15 are unable to perform cross-examination is
16 objectionable.

17 And we would also object to evidence that
18 would be considered hearsay evidence as well;
19 so those two types -- I mean, certainly at
20 least those two types of evidence are
21 objectionable, and we would also reiterate the
22 idea of waiver.

23 I know that's a little bit outside of this
24 question, but a lot of this information was
25 publically available and could have been

1 brought much, much earlier.

2 Counsel points to the Fox Business article
3 where a commentator alleges this relationship,
4 but that by itself seems like hearsay and
5 minute compared to the body of information that
6 they have already had access to much, much
7 earlier in the proceedings; so we would also
8 object to any new evidence brought on those
9 positions.

10 JUDGE HARDMAN: Do you know if TikTok had
11 the opportunity to perform cross-examination
12 instead the prior litigations that Patent
13 Owner's Counsel mentioned?

14 MR. GUPTA: I did not. But one of the
15 points that I wanted to make concerning that
16 was that the Board has held that -- RPI is just
17 a general concept of linkage between two
18 entities.

19 The RPI needs to specifically -- the
20 question is whether another entity has exerted
21 control over specific IPR petitions; so even if
22 we were able to cross-examine -- or excuse
23 me -- even if Tik-Tok were able to
24 cross-examine on whatever the issues were in
25 those other cases, the question of the specific

1 IPR's never came up in those cases; so reading
2 a cross-examination record from an unrelated
3 case that wasn't addressing these specific
4 IPR's has no bearing on whether the CCP would
5 be an RPI specifically listed in these
6 petitions; so it's almost not relevant whether
7 there was a cross-examination for those other
8 cases.

9 JUDGE HARDMAN: All right. I'm just going
10 to pause here to see if my co-panelists have
11 any further questions at this time for
12 petitioner.

13 If not, I want to turn back to patent
14 owner to see if you have further comments at
15 this stage before we get into more detailed
16 questions about potential scheduling and
17 logistics.

18 Okay. So let me go back to Mr. Vazquez
19 and just see if you have any brief response on
20 what you heard from petitioners.

21 MR. VAZQUEZ: Yes, thank you, your Honor.

22 First, let me address what Counsel for
23 Petitioner just stated with regards to their
24 opportunity to cross-examine in the previous
25 cases.

1 First of all, the underlying issue that we
2 would use that testimony for would be the
3 general exertion of control by the CCP, not
4 whether or not the CCP directed specifically in
5 the current IPR proceedings which I will add
6 controlled -- whether or not -- the question of
7 RPI doesn't turn solely on whether or not the
8 party controlled the decision on bringing an
9 IPR.

10 The analysis is broader than that. It's
11 not dispositive; so that prior testimony is
12 exactly -- is exactly the type of -- the same
13 type of testimony that we would be using here.

14 In other words, is the testimony related
15 to the control, the amount of control that the
16 CCP had over TikTok. No difference. No
17 difference. That's the first point.

18 The second point is, Counsel for
19 Petitioner mentioned that termination is
20 inappropriate because there's no estoppel,
21 again, here.

22 Well, again, that's not dispositive. The
23 naming of proper real parties in interest is a
24 statutory requirement, and the statutory
25 requirements were not followed when the

1 petition was filed. It failed. And that is a
2 basis for terminating the proceedings.

3 You know, with regard -- there are two --
4 legislative history, there are two related
5 purposes for RPI. And by the way, I'm reading
6 from IPR 2015-01750, a PTAB decision. And that
7 is to insure that third parties who have a
8 sufficiently close relationship with the IPR
9 petitioners will be bound by the outcome of
10 instituted IPR's under 315(e) the earlier
11 estoppel provisions; and two, to safeguard
12 patent owners from having to defend their
13 patents against belated administrative attacks
14 by related parties.

15 If the CCP -- the CCP, we contend, it's a
16 real party in interest. The CCP could very
17 easily -- there could very easily be another
18 TikTok situation in the future, where there's a
19 company in the United States that's controlled
20 by the CCP, and here we go again, that company
21 could potentially file IPR's against each
22 patent, in theory.

23 JUDGE VALEK: So, Counsel, I'm going to
24 interrupt you there because I think we're going
25 far deeper into the sort of substance of the

1 arguments that we need to at this stage; so I
2 do want to talk about logistics in terms of a
3 briefing schedule. But before I do that, I
4 wanted to see if Judge Valek has a comment at
5 this point.

6 JUDGE VALEK: Yeah, I was just going to
7 ask a follow-up to what you were saying,
8 Mr. Vazquez.

9 You're talking about the second bite at
10 the apple problem. I think that's what the
11 decision in RPX refers to, and it seems to me
12 that you're talking about a potential second
13 bite of the apple later on, but what we're
14 talking about here is the first bite, whether
15 they're entitled to IPR at all.

16 And, do you have any sort of precedent or
17 case, this idea that we could terminate when
18 there's isn't either of the concerns, the time
19 bar, the estoppel, the second bite at the
20 apple, none of those things seem to be
21 applicable here. Do you have any case law
22 beyond Return Mail from the separate argument,
23 as you call it, where a sovereign can't bring
24 an IPR.

25 Do you have any other sort of precedent or

1 legal theory as to why we should terminate
2 these cases when all these other concerns don't
3 seem to arise here?

4 MR. GUPTA: Well, Your Honor, again, these
5 are two separate bases, right. So the Return
6 Mail case --

7 JUDGE VALEK: Let me just interrupt you
8 for a second. Counsel, we're talking over one
9 another. Let me just interrupt you.

10 Yeah, maybe I'll de-aggregate it for you.
11 You say there are two separate bases. I
12 understand your Return Mail bases. I got that
13 one.

14 But this other separate basis, just the
15 fact they didn't identify the CCPA that you say
16 is an RPI and they say it's not an RPI, but
17 that seems a little bit like an issue that
18 doesn't need to be reached here.

19 It seems like that you're asking for an
20 advisory opinion because it doesn't matter if
21 they are or not because none of these
22 traditional concerns about second bite at the
23 apple, estoppel or time bar arise under the
24 facts here; so you're just asking us to make a
25 decision as to RPI, and if we decide that they

1 are an RPI, we should just terminate because
2 they didn't identify them in the petition.

3 Do you have a precedent to point to for
4 that sort of additional issue, to that what you
5 call a separate issue? Are we really just
6 talking about Return Mail?

7 MR. VAZQUEZ: No, with regard to that
8 separate issue, Your Honor -- okay. So there
9 is -- I'll refer to IPR 2016-01656. I'll also
10 refer to IPR 2015-00826.

11 Now, and those I do believe, although I'm
12 not certain that one of those, you know, and a
13 possible estoppel issue was there, but however,
14 while the strength that the Board, in reaching
15 the decision to terminate, did not tie that
16 decision to the fact that there's a potential
17 estoppel issue. They tie them to the statutory
18 requirements for naming the real parties in
19 interest at the time of filing, and if those
20 statutory requirements are not met, the
21 petition, it fails, because of the statutory
22 requirement.

23 JUDGE VALEK: Judge Hardman, I don't have
24 any follow-up; so I'll let you get onto the
25 point you wanted to get onto.

1 JUDGE HARDMAN: Is that Mr. Gupta?

2 MR. GUPTA: Yes, apologize for
3 interrupting your Honor. I was hoping to get a
4 quick word in before we moved on.

5 JUDGE HARDMAN: Okay. Go ahead with the
6 quick word.

7 MR. GUPTA: You know, to respond, the
8 board has held many times that the mere mention
9 of an RPI from the petition is not sufficient
10 grounds for termination, and I'll cite to
11 SharkNinja vs. iRobot. Also Blue Coat --
12 Sorry. SharkNinja vs. iRobot, IPR 2015-00739,
13 the board has said that the issue of RPI is
14 non-jurisdictional and it would not, you know,
15 without having other issues implicated like
16 time bar and estoppel, then simply omitting the
17 RPI is not sufficient for termination; so I'll
18 leave it with that.

19 JUDGE HARDMAN: So Mr. Vazquez, do you
20 have a post-schedule? Because as we
21 established at the top of this call, you need
22 two rounds of motion practice here really.

23 First, to seek additional discovery;
24 namely, the interrogatories. And then second,
25 to file the motion for termination. Do you

1 have a proposal on how we get that all done
2 before we have a hearing coming up in just a
3 few short months as well as our statutory
4 deadline; so have you thought about how to fit
5 this all in?

6 MR. VAZQUEZ: I have not but I'm happy to
7 do so right now, Your Honor. The hearing is --
8 I don't have that -- do you have that date
9 handy?

10 JUDGE HARDMAN: The hearing is June 18.

11 MR. VAZQUEZ: Okay. Well, we will be
12 ready to serve these interrogatories in the
13 next day or two to petitioner; so I guess I
14 would like to hear from petitioner in terms of
15 how much time they feel they would need. It
16 sounds like they're going -- well, they're
17 going to oppose. Go ahead.

18 JUDGE VALEK: This is Judge Valek. Before
19 you can serve them, you have to request
20 authorization. It sounds like that's going to
21 be disputed, and so what Judge Hardman is
22 referring to is under your proposal we have to
23 do two things.

24 We have to first decide whether you're
25 even entitled to interrogatories and then we

1 get to the motion to terminate; so there's two
2 sets of contested briefing that we'll proceed
3 to try to fit in before the hearing under your
4 current proposal, unless of course you just
5 decide to go ahead with the motion to terminate
6 and forego the additional discovery.

7 MR. VAZQUEZ: Your Honor, I'll go ahead
8 and do that in view of the short time frame.
9 We'll proceed without any additional discovery.

10 JUDGE VALEK: And so I guess to follow up
11 on that, if you forego the additional
12 discovery, when could you be ready to file your
13 motion with whatever evidence you propose to
14 submit with it? Keeping in mind that you're
15 eventually going to have to establish, you
16 know, that that evidence is admissible. Go
17 ahead.

18 MR. VAZQUEZ: Are you asking me to put a
19 time frame from the time that should you
20 authorize it that you do authorize or from
21 today?

22 JUDGE VALEK: If we are able to authorize
23 it today or any day, how long is it going to
24 take after that authorization for you to be
25 prepared to file it?

1 MR. VAZQUEZ: We would only need to -- I
2 would say three weeks.

3 JUDGE VALEK: And how many pages are we
4 talking about? Or word limit. Whatever limit
5 you prefer.

6 MR. VAZQUEZ: We would need to make
7 arguments as to admissibility of evidence. I
8 would say forty pages.

9 JUDGE VALEK: And I'm assuming that we
10 were going to give the petitioner a chance to
11 oppose it, and then you're going to want some
12 sort of reply, I would assume; right?

13 MR. VAZQUEZ: That's correct, Your Honor.

14 JUDGE VALEK: Okay. And so if we were to
15 give -- if we were to do a month after your
16 three weeks, so now we're talking about seven
17 weeks, give or take a few days, and then what,
18 an additional three weeks to reply, two weeks
19 to reply? What are we talking about there.

20 MR. VAZQUEZ: Two weeks, Your Honor.

21 JUDGE VALEK: So we're looking at nine to
22 ten weeks, and as Judge Hardman mentioned, you
23 know, we have a hearing coming up very shortly;
24 so I think even with that schedule it's going
25 to be pretty tight; so other than foregoing the

1 discovery, is there any other accommodation you
2 think you could make to try to mitigate sort of
3 the late timing of your request here?

4 MR. VAZQUEZ: But Your Honor, we can
5 push -- I can agree to file our opening motion
6 within two weeks of authorization.

7 JUDGE HARDMAN: Let me ask Mr. Gupta if
8 you have any commentary on that, assuming we
9 were to authorize motion practice, patent or
10 files within two weeks of authorization. Let's
11 say, would three weeks for opposition and
12 another two weeks for reply. What is
13 petitioner's view on that?

14 MR. GUPTA: Thank you, Your Honor. First,
15 we think that 40 pages is excessive for this.
16 I think trial practice calls for 15 pages other
17 than motions to amend; so at first we would
18 really restrict this down to a tighter motion.

19 Second, the timing is tough. You
20 mentioned we're going hold a hearing in the
21 middle of June; so it would eat up all of
22 April, I think, and then into May for us to be
23 addressing this question.

24 And that's going right up against the
25 beginning of our oral hearing; so we would,

1 again, push back on the fact that there's no
2 justification for this motion at all and ask
3 that you deny the motion.

4 JUDGE HARDMAN: Deny authorization?

5 MR. GUPTA: Deny authorization. Excuse
6 me.

7 MR. RENNER: Your Honor, this is Karl
8 Renner. I just want to add one thing to
9 Mr. Gupta's statement, if I may.

10 JUDGE HARDMAN: Yes.

11 MR. RENNER: Simply that it sounds like
12 from what I'm hearing that the movant here
13 would potentially be offering evidence in
14 addition to with their motion, and one of the
15 challenges that I'm seeing here is that it's
16 hard to know what timing we need because it
17 depends to some extent on what that evidence
18 is, and there may be a need to address it and
19 further investigate it and whatnot, so to some
20 extent I'm hesitant on the timing to the extent
21 this goes forward because of the opaqueness
22 that we seem to have as it relates to that. I
23 just wanted to offer that for your
24 consideration.

25 JUDGE HARDMAN: Let me ask Counsel for

1 patent owner: If we were to authorize the
2 motion, would you be willing to serve the
3 evidence right away before your brief is filed
4 to give petitioner the opportunity to get a
5 start on reviewing that, given that we're in a
6 compressed time situation here?

7 MR. VAZQUEZ: Well, your Honor, as I
8 indicated earlier, our evidence is going to be
9 based on primarily two previous court cases.
10 And that is TikTok, et al. vs. Garland and
11 TikTok vs. Trump. So those are available to
12 petitioner to review; so I don't understand
13 frankly the issue.

14 JUDGE HARDMAN: So you wouldn't be willing
15 to serve that then so that they can just obtain
16 that publically, is what I'm understanding?

17 MR. VAZQUEZ: Well, I mean, yeah. I mean,
18 these are publically available documents. I
19 mean, I could e-mail them, the cases. And, you
20 know, but these are documents that are
21 available in PACER.

22 MR. RENNER: I'm happy to speak to that,
23 Your Honor, if it's helpful.

24 JUDGE HARDMAN: Yes. Who is that
25 speaking? I'm sorry.

1 MR. RENNER: Oh, my apologies. This is
2 Karl Renner again.

3 The concern that circumstances, No. 1,
4 that primarily relates to those. I don't know
5 that that means the evidence will be fully
6 limited to those documents that are in those
7 cases, one.

8 And then, two, I'm confident, like, I
9 haven't reviewed the record of those cases, but
10 I'm going to guess there's a lot of evidence in
11 those cases that speak to a variety of things,
12 and I'm going to guess that wasn't framed up as
13 some sort of a real party in interest or other
14 related challenge; so I don't know what
15 evidence, I don't know how we could know what
16 evidence among the evidence that's there would
17 be implicated; so I appreciate your Honor's
18 suggestion that there would be some early
19 service, some way to try to avoid prejudice
20 under the circumstance.

21 MR. VAZQUEZ: Your Honor, Rene Vazquez.
22 I'm happy to get -- if I could get one week
23 from the time, if the board authorizes a
24 motion, can I get one week from the date of
25 authorization? I'm happy to identify with

1 specificity the evidence we plan to use in our
2 motion.

3 JUDGE HARDMAN: Okay. Thank you for that
4 suggestion. Okay.

5 I think the panel has what we need,
6 although let me pause just to give my
7 co-panelists a moment to jump in. But I think
8 we can wrap it up here and take this issue
9 under advisement.

10 I'll probably regret doing this, but let
11 me just ask Mr. Vazquez if you have any
12 additional thoughts at this juncture. I don't
13 think we need additional arguments. I think we
14 heard what we need to on that, but I just want
15 to give you the opportunity for any last minute
16 comments.

17 MR. VAZQUEZ: Thank you, Your Honor.
18 Nothing more. Nothing more from me.

19 JUDGE HARDMAN: Thank you. Appreciate
20 that.

21 Mr. Gupta or Mr. Renner, anything? Any
22 further last minute comments from Petitioner?

23 MR. GUPTA: Judge Hardman, this is Mr.
24 Gupta. No. Thank you very much for your time
25 and your questions today. We appreciate it.

1 JUDGE HARDMAN: Let me just briefly pause
2 in case Judges Anderson and Valek jump in.

3 Okay. Hearing nothing, like I said, we'll
4 take this under advisement. And I think the
5 next steps are we will either issue our order
6 or potentially reach out to the parties for
7 further conference call if needed, but with
8 that, we're adjourned for today.

9 Thank you to the parties for answering our
10 questions and appearing today. Thank you to
11 Mr. McDonald. With that, we're adjourned.

12 Have a good day.

13 (Whereupon, the proceedings
14 adjourned at 12:40 p.m.)

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2 I, Brian M. McDonald, Certified Shorthand Reporter,
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15 Brian M. McDonald

16 Certified Shorthand Reporter

17 Dated this 23rd day of March 2025
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