

From: Paquette, Ian G. <IGPaquette@Venable.com>
Sent: Monday, November 3, 2025 10:20 AM
To: Wilson, Andrew <andrew.wilson@BakerBotts.com>; Trials <Trials@USPTO.GOV>
Cc: Williams, Eliot D. <Eliot.Williams@BakerBotts.com>; Guy, Hop <hop.guy@BakerBotts.com>; DishvMindGeek <DishvMindGeek@BakerBotts.com>; Gasparo, Frank M. <FMGasparo@Venable.com>; Sheng, Philip T. <PTSheng@Venable.com>; Zimmerman, Parker G. <PGZimmerman@Venable.com>
Subject: RE: IPR2024-00940 - Aylo v. DISH

Dear Honorable Board,

Counsel for Petitioner Aylo Freesites Ltd (“Aylo”) responds to DISH’s email below. Aylo apologizes for this lengthy response, but given DISH’s misrepresentations and failure to meet and confer, Aylo believes it is necessary.

On October 30, 2025—just three weeks before the final written decision in this matter is due—DISH raised for the first time an alleged failure by Aylo to name an RPI and its intention to seek leave to file a motion to dismiss or alternatively to seek discovery into Aylo’s corporate structure.

Meet and Confer: Despite the representations in its email, DISH did *not* request a meet and confer, but instead it perfunctorily asked counsel to “[p]lease confirm whether you oppose [these motions].” Aylo’s counsel has limited availability this week due to a pretrial conference and jury trial in an unrelated matter scheduled for November 10 and November 17, respectively, in the Eastern District of Texas. Nonetheless, Aylo’s counsel promptly replied to DISH, disputing its characterizations and providing windows of availability to meet and confer per the Board’s rules. Rather than respond and attempt to schedule a meet and confer, DISH immediately emailed the Board. The entire email chain is attached for the record and for the Board’s review. This matter should have been resolved without troubling the Board.

DISH’s Request is Untimely: This IPR has been pending for nearly 18 months. With just three weeks until issuance of a final written decision, DISH raises for the first time that an entity named 9219-1568 Québec, Inc. should have been named as an RPI, and seeks the extreme remedy of vacating the entire IPR and undoing 18 months of work by the parties and Board. But importantly, this is not a situation where DISH suddenly just found out about 9219-1568 Québec, Inc. DISH has known about 9219-1568 Québec, Inc. and its corporate structure since at least May 30, 2024, when it served a district court complaint against 9219-1568 Québec, Inc. alleging infringement of the same ’234 Patent at issue here. Case No. 2:24-cv-00066 (D. Utah). Yet, not once in its Patent Owner’s Preliminary Response, Patent Owner’s Response, Sur-Reply, or at the Oral Hearing, did DISH mention anything about 9219-1568 Québec, Inc. needing to be named as an RPI.

The Board has rejected such 11th hour RPI challenges as untimely. For example, in *Sony Computer Entertainment America LLC v. Game Controller Technology LLC*, the Board rejected as untimely a Patent Owner’s motion to terminate based on a failure to name an RPI in the petition because Patent Owner waited until six weeks before the deadline for final written decision. IPR2013-00634, Paper 31 at 3-4 (P.T.A.B. Apr. 2, 2015). The Board noted that “to grant Patent Owner’s motion under these circumstances would create incentives encouraging Patent Owners to reserve arguments relating to RPIs that could be brought early in the proceeding until after all the merits in the underlying review have been briefed and argued.” *Id.* at 4. That is precisely what DISH is doing here, and the Board should deny its request as untimely.

DISH is Wrong on the Merits: DISH relies solely on the newly precedential decision *Corning Optical Communications RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 (P.T.A.B. August 18, 2015) (precedential except § II.E.1) and vague allegations that 9219-1568 Québec, Inc. is Aylo’s “sister company” and is under common ownership and control based on a completely unrelated FTC complaint (filed two months ago, yet DISH is only raising the issue now). DISH’s request is nothing more than an untimely fishing expedition.

DISH’s cited FTC complaint shows that 9219-1568 Québec, Inc. is a Canadian company whose parent company is 9279-2738 Québec Inc., a Canadian company. Petitioner Aylo Freesites Ltd is a Cypriot entity whose parent is Aylo Group Ltd, a Cypriot entity. See FTC Complaint at 12. DISH is also incorrect that 9219-1568 Québec, Inc. stood “to benefit directly from the outcome of this proceeding” because the Petition in this IPR was filed *before* DISH served its complaint in the Utah district court action asserting the ’234 Patent (Case No. 2:24-cv-

00066). Specifically, the Petition in this IPR was filed on May 21, 2024, and DISH did not serve its district court complaint until May 30, 2024. The Board should reject DISH's fishing expedition outright on these points alone.

But more fundamentally, Aylo represents that at no time did 9219-1568 Québec, Inc. fund, direct, or control, any part of these IPR proceedings, and DISH cannot point to anything to indicate otherwise. DISH's allegations of "corporate blurring" and overlapping officers are unsubstantiated and are untethered to the present proceeding. "General sharing of business resources or cooperation in business operations, and mere corporate relationships within a family of related companies, without more, are insufficient to show control, or opportunity for control, over Petitioner's participation in this proceeding." *First Quality Baby Products, LLC v. Kimberly-Clark Worldwide, Inc.*, IPR2014-01021, Paper 42 at 9 (P.T.A.B. July 16, 2015). "The fact that certain managers and other personnel may hold positions at Petitioner as well as other entities also falls short of indicating sufficiently that those entities are real parties in interest." *Id.* Thus, DISH's request can be denied outright on this basis as well.

Section 312(a) is not Jurisdictional: Even if 9219-1568 Québec, Inc. should have been named as an RPI under 35 U.S.C. § 312(a)(2), Aylo can seek leave to update its mandatory notices to add 9219-1568 Québec, Inc. as an RPI if the Board deems it necessary because **§ 312(a) is not jurisdictional**. The precedential *Lumentum* decision is explicit that "a lapse in compliance with" § 312(a) "does not deprive the Board of jurisdiction over the proceeding, or preclude the Board from permitting such lapse to be rectified." *Lumentum Holdings, Inc. v. Capella Photonics, Inc.*, IPR2015-00739, Paper 38 at 5 (P.T.A.B. March 4, 2016) (precedential). *Lumentum* continues, "[f]or example, if § 312(a) were jurisdictional, a patent owner could show at the conclusion of trial that a petitioner failed to attach to the petition a copy of a patent 'relied upon in support of the petition,' as required by § 312(a)(3)(A), and we would have no choice but to terminate the proceeding" which is "***contrary to the interests of justice***." *Id.* (emphasis added).

In addition, under the precedential *Proppant* decision, if the Board deems it necessary, Aylo can seek leave to update its mandatory notices to add an RPI while maintaining the original filing date because (1) there has been no attempt to circumvent the § 315(b) time bar, (2) there is no evidence of bad faith, (3) there is no prejudice to patent owner, and (4) there is no evidence of gamesmanship by Aylo. *Proppant Express Investments, LLC v. Oren Techs., LLC*, IPR2017-01917, Paper 86 at 6-7 (P.T.A.B. Feb. 13, 2019) (precedential). The Board in *Proppant* held that it may "accept updated mandatory notices as long as the petition would not have been time-barred under 35 U.S.C. § 315(b) if it had included the [unnamed] real party in interest." *Id.* at 7. That is the case here. At the time of filing, the Petition would not have been time barred because DISH had not served 9219-1568 Québec, Inc. with a complaint alleging infringement of the '234 Patent so the time bar clock had not even started.

Thus, if the Board is inclined to authorize DISH's request, this entire issue can be obviated through an updated mandatory notice. Specifically, to resolve any dispute and avoid needless motion practice on the eve of final written decision, Aylo can simply be granted authorization to update its mandatory notices to add 9219-1568 Québec, Inc. as an RPI without conceding that 9219-1568 Québec, Inc. is actually an RPI, but solely to resolve this dispute. *Proppant* approves of such RPI listings that identify a party as an RPI but without admitting that they are in fact an RPI. IPR2017-01917 Paper 86 at 14-15.

Availability for a Conference Call: Aylo's counsel would have raised all of the above points on a meet and confer with DISH's counsel, but regrettably, DISH's counsel opted to preemptorily burden the Board. DISH's request should be denied for any of the reasons presented above. However, if the Board is inclined to hold a conference call, Aylo's counsel is available for a conference call at the below times:

Wednesday, November 5, 2025: 12pm-5pm ET;

Thursday, November 6, 2025: 12pm-3pm or 4pm-5pm ET.

Respectfully,
Ian Paquette (Back-Up Counsel for Petitioner)

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Attachment

From: [Paquette, Ian G.](#)
To: ["Wilson, Andrew"](#); [Gasparo, Frank M.](#); [Sheng, Philip T.](#); [Zimmerman, Parker G.](#)
Cc: [Williams, Eliot D.](#); [Guy, Hop](#); [DishvMindGeek](#)
Subject: RE: IPR2024-00940 - Aylo v. DISH
Date: Friday, October 31, 2025 9:07:00 AM

Counsel,

We do not understand your allegation that 9219-1568 Quebec Inc. is a real party in interest or a sister company of Petitioner.

So please let us know your availability to discuss this before burdening the Board. We have limited availability next week to meet and confer but are available on Wednesday 11/5 between 12pm and 5pm ET or on Thursday 11/6 12pm-3pm or 4pm-5pm ET. If a time works for your side in those windows, please send an invite.

Thanks,
Ian

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From: Wilson, Andrew <andrew.wilson@BakerBotts.com>

Sent: Thursday, October 30, 2025 12:32 PM

To: Gasparo, Frank M. <FMGasparo@Venable.com>; Paquette, Ian G. <IGPaquette@Venable.com>; Sheng, Philip T. <PTSheng@Venable.com>; Zimmerman, Parker G. <PGZimmerman@Venable.com>

Cc: Williams, Eliot D. <Eliot.Williams@BakerBotts.com>; Guy, Hop <hop.guy@BakerBotts.com>; DishvMindGeek <DishvMindGeek@BakerBotts.com>

Subject: IPR2024-00940 - Aylo v. DISH

Caution: External Email

Counsel,

DISH intends to seek Board authorization to file a motion to dismiss the Petition for failure to name all real parties-in-interest, or, in the alternative, to seek targeted discovery into Aylo's corporate structure and control relationships.

As you know, 35 U.S.C. § 312(a)(2) requires that a petition identify all real parties-in-interest before it can be considered by the Board. This includes any entity that funds, directs, or controls the filing or conduct of the IPR, or whose relationship with the petitioner is so close that it could have exercised such control or will directly benefit from the outcome.

Here, Petitioner's sister company, 9219-1568 Quebec Inc., is a real party-in-interest because it shares common ownership with Petitioner and, as a named defendant in the related Utah District

Court action (Case No. 2:24-cv-00066), stands to benefit directly from the outcome of this proceeding. By failing to name all RPIs as required by § 312(a)(2), the Petition is incomplete and must be dismissed. See *Corning Optical Communications RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015) (Precedential) (petition failing to identify all RPIs cannot be cured without a new, and potentially time-barred, filing date). Because any corrected petition would receive a new filing date and be time-barred under § 315(b), this proceeding must be terminated.

Please confirm whether you oppose.

Thanks,

Andrew Wilson

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