

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AYLO FREESITES LTD,
Petitioner,

v.

DISH TECHNOLOGIES L.L.C.,
Patent Owner.

IPR2024-00940

U.S. PATENT NO. 11,991,234

**PATENT OWNER'S REPLY TO MOTION TO DISMISS PETITION
FOR FAILURE TO NAME ALL REAL PARTIES IN-INTEREST**

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Patent Owner's Reply ISO Motion to Dismiss the Petition**I. INTRODUCTION**

“The integrity of PTAB proceedings depends on knowing who is behind a petition—who funds it, directs it, and/or benefits from it.” EX2152 (Oct. 28, 2025 Memo, “Memo”), at 4. Pursuant to the Director’s Memo, this proceeding should be terminated because Petitioner Aylo Freesites Ltd (“Petitioner” or “Aylo”) failed to comply with its statutory obligations under 35 U.S.C. § 312(a)(2) and 37 C.F.R. §§ 42.8, 42.104, 42.106 to identify all real parties-in-interest (“RPIs”). Requiring dismissal here for failing to name all RPIs incentivizes transparency in USPTO proceedings, ensures fairness to patent owners in applying IPR estoppel, and increases efficiency by avoiding mid-proceeding disputes over party identity.

Rather than providing evidence to address the RPI control, benefit, and relationship inquiries, Aylo quibbles with collateral issues and avoids dispositive facts, all of which remain unrebutted: *First*, Aylo admitted to the PTAB in co-pending and contemporaneously-filed IPRs that 9219 is an RPI, yet never offers any evidence that the same is not true here, thus failing to meet its burden. Mot., 3-5; Opp., 5. *Second*, Aylo confirmed DISH’s allegation that 9219—a co-defendant in related litigation involving *the challenged ’234 Patent*—is Aylo’s operational entity that provides “business services” *pertaining to Aylo’s accused technology* in related litigation, and therefore has a clear, direct interest in the outcome of *this proceeding*. Opp., 2; Mot., 4-5. Despite Aylo’s assertions, DISH did not “conflate[] RPIs with

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privies” (Opp., 1-2) just because the evidence of an RPI-relationship also shows Aylo’s preexisting business relationship with 9219. And *third*, DISH raised the RPI issue within days of the Director’s Memo designating *Corning* as precedential (IPR2014-00440, Paper 68), wherein the PTAB terminated an instituted IPR for RPI defects. Aylo’s timeliness and “jurisdictional” arguments therefore also fail. These undisputed facts satisfy the Director’s RPI framework and governing law and compel termination.

II. ARGUMENT

A. Aylo’s Prior Admission Creates a Presumption of RPI Status That It Cannot Rebut

Aylo’s admission that 9219 is an RPI in *WellcomeMat* (IPR2024-00710, IPR2024-01101) establishes a presumption of RPI status here that Aylo has not rebutted. *See* EX2153, 13. *See Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 88, 8 (PTAB Jan. 6, 2015) (“[W]hen, as here, a patent owner provides sufficient rebuttal evidence that reasonably brings into question the accuracy of a petitioner’s identification of the real parties in interest, the burden remains with the petitioner to establish that it has complied with the statutory requirement to identify all [RPIs].”). In fact, Aylo offers no factual basis to explain how 9219 can be an RPI when Aylo challenges one set of patents asserted against nearly identical technology, but only a “privy” when Aylo challenges DISH’s patent. Aylo’s unsupported attorney argument compels finding 9219 is an unnamed RPI.

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Aylo relies on *Mobile Tech* (IPR2017-02199, Paper 9 (PTAB Apr. 10, 2018))

for the proposition that RPI listings need not be identical between proceedings. Opp.,

5. But Aylo overlooks that the petitioner in *Mobile Tech* proffered evidence, including a declaration of its CEO, justifying its RPI identifications. *Mobile Tech*, 8.

Aylo offers no such evidence here. Aylo understood 9219 is an RPI but obfuscates that relationship when the consequence is dismissal.

B. The Record Confirms that 9219 is Aylo's Operational Entity and a Clear Beneficiary

Aylo also fails to rebut DISH's assertion that 9219 is Aylo's operational entity that carries out the activities relevant to the accused technology. Unlike Aylo, which is a Cypriot company having few (if any) employees despite operating one of the largest online pornography platforms, 9219 employs hundreds of employees to supply "computer and related services" to multiple Aylo entities (including Petitioner) under the same trade name: "Aylo." Mot., 4 (citing EX2156, 9-10); *see also Corning*, 17 (use of common trade names supports RPI relationship).

Although Aylo has not produced a corporate chart, financial data, or any evidence affirmatively describing the relationship between the entities, the publicly available evidence—including affidavits from overlapping directors (EX2159), business registry documents (EX2156, EX2157), and court filings (EX2158)—corroborates the admitted operational connection between Aylo and 9219. This is analogous to *Corning*, where the PTAB found RPI status because "it [was] difficult

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for both insiders and outsiders to determine precisely where one end[ed] and another beg[an].” *Corning*, 18 (quoting *Atlanta Gas Light* at 22).

C. 9219 Had Ample Opportunity and Incentive to Control

Aylo’s assertion that “9219 did not fund or control this IPR” (Opp., 1) misses the mark. Under *Corning*, an entity is an RPI if it exercised control or had the *opportunity to do so*. *Corning*, 15 (quoting Trial Practice Guide, 77 Fed. Reg. at 48,759). Given that 9219 is Aylo’s operational arm, shares corporate directors with Aylo, and is a co-defendant in the parallel district court litigation involving the ’234 Patent, it has a direct, concrete interest in controlling this IPR. *See Ventex Co. Ltd. v. Columbia Sportswear N. Amer., Inc.*, IPR2017-00651, Paper 148, 9 (PTAB Jan. 24, 2019) (precedential) (“There cannot be any credible assertion that a determination of invalidity ... would not inure to the benefit of Seirus.”). The extensive corporate blurring leaves no plausible dispute that 9219 had every opportunity to control this case from inception and is an unnamed RPI.

D. DISH’s Motion and Requested Relief are Timely and Appropriate

DISH raised the RPI issue within days of the Director’s Memo designating *Corning* as precedential, which signaled a new PTAB policy that an RPI omission may warrant termination even after institution. Before that designation, PTAB panels rejected RPI challenges absent a time-bar issue. *See e.g., SharkNinja Operating LLC v. iRobot Corp.*, IPR2020-00734 (PTAB Oct. 6, 2020). The

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Director's Memo expressly changed that landscape, and DISH acted promptly.

Aylo's suggestion that DISH should have raised Aylo's failure earlier ignores the statutory framework. It is Aylo's burden, not DISH's, to identify all RPIs in its Petition. *Corning*, 11 (rejecting petitioner's argument that patent owner's awareness of RPI involvement in prior parallel litigation undermines timeliness). As the Director emphasized, "the Office cannot address the misuse of AIA proceedings ... unless it requires parties to identify [their own] RPIs." EX2152, 4.

Nor does Aylo's argument that "§ 312(a)(2) is not jurisdictional" help it. Opp., 2, 6. The relevant point—confirmed by *Corning*—is that a petition failing to identify all RPIs "cannot be considered" and that this defect requires termination even after institution. *Corning*, at 14–15 (citing *Medtronic, Inc. v. Robert Bosch Healthcare Sys., Inc.*, IPR2014-00488, Paper 61 (PTAB May 22, 2015)). "Jurisdictional" or not, the practical effect is the same: the PTAB may not maintain an instituted IPR where the petition failed to satisfy § 312(a)(2).

For the same reason, Aylo's belated offer to amend its mandatory notices for the sixth time does not cure the defect and should be rejected. Under *Corning*, any such amendment would require a new filing date, which Aylo could not lawfully obtain. The Petition is defective, and the IPR must be terminated.

Respectfully Submitted,

Date: December 2, 2025

/Eliot D. Williams/
Eliot D. Williams (Reg. No. 50,822)

Patent Owner's Reply ISO Motion to Dismiss the Petition

Andrew Wilson (Reg. No. 74,093)
Jamie R. Lynn (Reg. No. 63,666)
BAKER BOTTS L.L.P.
700 K Street, N.W.
Washington, D.C. 20001
202.639.1334
202.639.1312
202.639.7786

G. Hopkins Guy III (Reg. No. 35,886)
BAKER BOTTS L.L.P.
1001 Page Mill Road, Bldg. 1, Suite 200
Palo Alto, California 94304-1007
650.739.7500

Ali Dhanani (Reg. No. 66,233)
Thomas B. Carter Jr. (Reg. No. 76,040)
Zacharias E. Shepard (Reg. No. 83,358)
BAKER BOTTS L.L.P.
910 Louisiana St.
Houston, TX 77002
713.229.1108

Attorneys for Patent Owner, DISH
Technologies L.L.C.

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Patent Owner's Reply ISO Motion to Dismiss the Petition
CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), we certify that an electronic copy of the foregoing **PATENT OWNER'S REPLY TO MOTION TO DISMISS PETITION FOR FAILURE TO NAME ALL REAL PARTIES IN-INTEREST** was served on Petitioner's counsel of record at the following address:

FMGasparo@Venable.com

IGPaquette@Venable.com

PTSheng@Venable.com

PGZimmerman@Venable.com

Date: December 2, 2025

/Eliot D. Williams/
Eliot D. Williams (Reg. No. 50,822)

Attorney for Patent Owner, DISH
Technologies L.L.C.

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CERTIFICATION UNDER 37 C.F.R. § 42.24(d)

Pursuant to 37 C.F.R. § 42.24(d), the undersigned hereby certifies that the foregoing **PATENT OWNER'S REPLY TO MOTION TO DISMISS PETITION FOR FAILURE TO NAME ALL REAL PARTIES IN-INTEREST** totals 5 pages, within the 5-page limit allotted by the Board's November 7 order.

Date: December 2, 2025

/Eliot D. Williams/
Eliot D. Williams (Reg. No. 50,822)
Andrew Wilson (Reg. No. 74,093)
Jamie R. Lynn (Reg. No. 63,666)
BAKER BOTTS L.L.P.
700 K Street, N.W.
Washington, D.C. 20001
202.639.1334
202.639.1312
202.639.7786

G. Hopkins Guy III (Reg. No. 35,886)
BAKER BOTTS L.L.P.
1001 Page Mill Road, Bldg. 1, Suite 200
Palo Alto, California 94304-1007
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Ali Dhanani (Reg. No. 66,233)
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BAKER BOTTS L.L.P.
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Attorneys for Patent Owner, DISH
Technologies L.L.C.