

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TIKTOK, INC.,
Petitioners

v.

DISTEFANO WEBSITE INNOVATIONS, LLC.,
Patent Owner

PTAB Case No. IPR2025-01061
Patent No. 11,763,316

**PATENT OWNER'S RESPONSE TO ISSUES RAISED BY DIRECTOR IN
SUA SPONTE REVIEW OF MAY 27, 2026**

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The Protecting Americans from Foreign Adversary Controlled Applications Act
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Tianma Microelectronics Co., Ltd. v. LG Display Co., Ltd., IPR2025-01579.....2, 3

I. INTRODUCTION

On May 27, 2026, Director John A. Squires initiated *Sua Sponte* Director Review in IPR2025-01061 and authorized the parties to file ten-page briefs addressing the issues of:

- A) Whether at the time the Petition was filed, a foreign government was an unnamed RPI, and whether the petition is thus barred;
- B) What effect, if any, does the January 2026 announced TikTok USDS Joint Venture LLC have on the proceeding, including whether and to what extent RPI issues are otherwise alleviated; and
- C) Whether a time bar applies.

II. INITIAL PETITION FILING

In the Petition for *Inter Partes* Review (“Petition”), the Petitioner failed to name the Chinese Communist Party (“CCP”) as a real party-in-interest at the time of filing, and an entity controlled by a sovereign (here, the CCP) may not qualify as “persons” eligible to challenge a patent via an administrative patent review, such as an *Inter Parties* Review, *see Return Mail Inc. v. United States Postal Service*, 587 U.S. 117 (2019).

A. The Chinese Communist Party is a Real Party-In-Interest

In IPR2025-001061, the submitted Petition listed “TikTok Inc. Bytedance Ltd, Bytedance Pte. Ltd., Bytedance Inc., TikTok Ltd., and Heliophilia Pte. Ltd.” as the real parties-in-interest (“RPIs”). *See* Petition, p.115. At the time of the Petition’s filing, TikTok was owned by Beijing-based ByteDance. Like many Chinese companies, ByteDance is legally required to establish an in-house Communist Party committee composed of party-member employees. Under Patent Office precedent, petitioners are obligated to identify all RPIs in their petitions. *Corning Optical Commc’ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015) (precedential, except § II.E.1) (“Corning Optical”). This did not occur.

Petitioner bears the burden to bring forth evidence or arguments demonstrating that it named all RPIs—and specifically naming all parties who are foreign governments or entities a foreign government had the ability to control. *See Tianma Microelectronics Co., Ltd. v. LG Display Co., Ltd.*, IPR2025-01579, Paper 12 at 9–10 (emphasis added, citing *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1242 (Fed. Cir. 2018) (“*Tianma*”). It was Petitioner’s obligation to identify all RPIs.

On December 23, 2025, Patent Owner raised the issue of RPIs in an email to the Board, pointing out that the CCP was not listed as an RPI and that the IPR institution must be vacated and dismissed.

B. The CCP Is Not A “Persons” Eligible To Challenge A Patent

On March 18, 2026, the Board issued *Tianma*, IPR2025-01579, Paper 12, a precedential decision that held a proper application of the U.S. Supreme Court’s precedent in *Return Mail, Inc. v. United States Postal Service*, 587 U.S. 618 (2019), dictates that a foreign government cannot be considered a “person” under the AIA and, therefore, is not permitted to seek review of a patent before the Office as a petitioner in AIA proceedings. *Tianma*, Paper 12 at 4. The CCP is not a person, and under *Return Mail, Inc.*, cannot seek *inter partes* review of a patent. Even if Petitioner listed the CCP as a real party-in-interest, the IPR could not be instituted, as the CCP cannot seek review of a patent. Thus, the IPR institution in this proceeding, IPR2025-01061, must be vacated and dismissed.

III. JANUARY 2026 ANNOUNCEMENT OF TIKTOK USDS JOINT VENTURE LLC DOES NOT CHANGE THAT PETITIONER FAILED TO IDENTIFY ALL REAL PARTIES-IN-INTEREST

In view of the announcement of the TikTok USDS Joint Venture LLC (“TikTok Joint Venture”), Petitioner once again failed to identify all the RPIs – specifically omitting the CCP. The Joint Venture was a result of an Executive Order 14258 signed by President Trump on September 25, 2025 and The Protecting Americans from Foreign Adversary Controlled Applications Act (the “Act”) (Public Law 118-50, Div. H) that regulates “foreign adversary controlled applications,”

specifically those operated by TikTok and any other subsidiary of its China-based parent company, ByteDance Ltd., on national security grounds.

In a January 23, 2026, press release, the creation of the TikTok Joint Venture was announced. *See* <https://newsroom.tiktok.com/announcement-from-the-new-tiktok-usds-joint-venture-llc?lang=en>. The press release also indicated that one of RPI - - namely, ByteDance, “retains 19.9% of the Joint Venture.” *Id.* On February 11, 2026, Petitioner filed an Updated Mandatory Notice seeking “permission to update its mandatory notices to identify TikTok USDS Joint Venture LLC as an RPI.” *See* Paper 16. Notably, the Updated Mandatory Notice does not seek permission to add either the CCP or any member of the ownership group of the TikTok Joint Venture identified within the press release. Thus, the Chinese Communist Party remains an unnamed RPI.

The Petitioner’s burden required identification of all RPIs at the time of filing the Petition, which the Petitioner failed to do, and this error is not correctable. However, even if the Petitioner updated its Mandatory Notices to add the CCP as a real party-in-interest on February 2, 2026; Petitioner failed to do so. Although the Updated Mandatory Notice seeks to add TikTok USDS Joint Venture LLC as an RPI, the Updated Mandatory Notice fails to list the CCP, as ByteDance is controlled by the Chinese government. Not only is ByteDance still listed as an RPI, ByteDance also has a 19.9% ownership interest in the TikTok Joint Venture. Consequently,

despite the creation of the TikTok Joint Venture, the CCP must still be listed as an RPI because as an RPI, the CCP is missing from the updated mandatory notice. And, that missing party is not a “person” capable of being an RPI; this IPR institution must still be vacated and dismissed.

IV. TIME BAR

The Director seeks information about any time bars that would apply. The 11,763,316 patent is the subject of litigation (Case No. 2:24-cv-00874-RWS-RSP (E.D. Tex.) with the complaint filed on October 29, 2024.¹ The litigation was filed twenty (20) months ago, and Petitioner would be time-barred from filing another IPR on the '316 patent.

CONCLUSION

Petitioner TikTok failed to list a real party-in-interest when this IPR was originally filed, and even if listed, the CCP would be classified as a non-person. Further, it is the Petitioner’s burden to establish that they did not need to list any other real parties-in-interest, and all real parties-in-interest are “people.” Petitioner TikTok’s failures to identify the real party in interest are fatal, and the

¹ Subsequently, the case was transferred to the U.S. District Court for the Northern District of California (Case No. 5:25-cv-10578).

Director should vacate the institution and dismiss the IPR.

Respectfully submitted,

June 3, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies the service of Patent Owner PATENT OWNER'S RESPONSE TO SUA SPONTE DIRECTOR REVIEW, served this Patent Owner's Preliminary Response on the counsel of record for Petitioner TIKTOK INC., by filing this document through the P-TACTS, as well as delivering a copy via electronic mail to the following:

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