

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TIKTOK INC.,
Petitioner

v.

DISTEFANO WEBSITE INNOVATIONS, LLC,
Patent Owner.

Case No. IPR2025-01061

Patent No. 11,763,316

**PETITIONER'S SUPPLEMENTAL BRIEF IN RESPONSE TO THE
DIRECTOR'S MAY 27, 2026 ORDER AUTHORIZING BRIEFING**

Patent Owner failed to offer any evidence that could establish Petitioner's real-party-in-interest ("RPI") disclosure was deficient. The instant matter is thus distinct from *Yangtze Memory Technologies Company, Ltd. v. Micron Technology, Inc.*, IPR2025-00098 and -00099, and *TikTok Inc. v. Cellspin Soft, Inc.*, IPR2024-00757, where the respective patent owners at least presented supporting evidence on the record with their RPI challenges. Patent Owner in this proceeding therefore did not meet its burden and should not now be permitted to supplement the record at this stage.

Petitioner has always complied with the RPI disclosure requirements of 37 C.F.R. § 42.8—at the time of filing of its Petition and subsequently in updated disclosures after the January 2026 announcement of the TikTok USDS Joint Venture LLC. Patent Owner's belated attempt to circumvent the relevant rules and strike Petitioner's updated disclosures should be rejected. There are no RPI disclosure deficiencies that bar this matter from proceeding forward.

I. The Petition Should Not Be Barred By Petitioner's Initial RPI Identification

A. Patent Owner Failed to Meet Its Burden of Establishing That Petitioner's RPI Disclosure Was Deficient

Patent Owner has the burden to establish that Petitioner's RPI disclosure was deficient, but Patent Owner never presented any evidence to support that conclusion. The IPR therefore should proceed.

A patent owner challenging a petitioner's RPI disclosure must provide sufficient evidence to show the disclosure is inadequate. *Corning Optical Commc 'ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68, 13 (PTAB Aug. 18, 2015) (precedential, except § II.E.1) (citing *Intellectual Ventures Mgmt., LLC v. Xilinx, Inc.*, IPR2012-00018, slip op. at 3 (PTAB Jan. 24, 2013) (Paper 12)). If the patent owner does so before institution, the petitioner bears the burden to establish it complied with the disclosure requirement. *Id.* (citing *Zerto Inc. v. EMC Corp.*, IPR2014-01254, slip op. at 6–7 (PTAB Feb. 12, 2015) (Paper 32)). After institution, however, it is the *patent owner's burden* to establish non-compliance with the RPI requirement. *Id.* at 13–14 (citing 37 C.F.R. § 42.20(a), (c); § 42.1(d)).

Here, Patent Owner failed to offer any evidence that could even suggest Petitioner's RPI disclosure is inadequate. Petitioner made its RPI disclosure in its May 30, 2025 Petition. *See* Paper 2 (Petition), 115 (identifying TikTok Inc. and Bytedance Ltd., Bytedance Pte. Ltd., Bytedance Inc., TikTok Ltd., and Heliophilia Pte. Ltd.). Before institution, Patent Owner provided no evidence challenging Petitioner's RPI disclosure. Indeed, in its Preliminary Response, Patent Owner did not dispute that disclosure. *See* Paper 12 (Patent Owner's Preliminary Response, Sep. 23, 2025). In its Brief in Support of Discretionary Denial, Patent Owner merely speculated that some party might purchase Petitioner and thus “there is a party that has yet to be named that may have actual knowledge of the '316 patent” and

proffered no evidence in support. Paper 7 at 9 (Aug. 23, 2025). But Patent Owner never argued that Petitioner’s original RPI disclosure was deficient. The Board then granted institution on December 23, 2025. Paper 14.

Thus, having failed to present any evidence that “reasonably brings into question the accuracy of a petitioner’s identification of RPI” before institution, Patent Owner now bears the burden to establish by a preponderance of the evidence that Petitioner’s RPI disclosure was deficient. *Corning Optical*, 13. But Patent Owner has presented no evidence at all, and should not now be permitted to remedy that failure.¹ Patent Owner’s challenge to Petitioner’s RPI disclosure therefore should be rejected on this basis alone.

B. Patent Owner’s Challenge To Petitioner’s RPI Disclosure Was Inexcusably Late

It was not until *after* the Board’s December 23, 2025 Decision to Institute that Patent Owner raised—for the first time—the issue of a foreign sovereign allegedly being an unnamed RPI in its email to the Board. *See* Exhibit 3101 (Board’s January 14, 2026, E-mail responding to Patent Owner’s December 23, 2025, 5:05 p.m. E-mail). In assessing the timeliness of a Patent Owner’s RPI disclosure dispute, the Board examines “the circumstances of how and when Patent Owner became aware

¹ The Director specifically stated in the May 27, 2026 Order that “[a]dditional evidence is not authorized at this time.” Paper 18, 3. To the extent Patent Owner attempts to supplement evidence with its Supplemental Brief in accordance with the Director’s Order, it should be disregarded.

of that evidence” supporting its challenge. *First Quality Baby Products, LLC, v. Kimberly-Clark Worldwide, Inc.*, Case IPR2014-01024, slip op. at 6 (PTAB July 16, 2015) (Paper 41) (denying a patent owner’s Motion to Vacate Institution based on challenges to Petitioner’s RPI disclosure, where the patent owner cannot show that “its Motion was precipitated by the discovery of new information”).

Patent Owner has no basis to argue that its post-institution December 2025 challenge to Petitioner’s RPI disclosure was in any way prompted by discovery of new information. Patent Owner’s proposed challenge mimics that raised by Cellspin Soft Inc. in IPR2024-00757 but does not identify any information prompting the late challenge. *See* Exhibit 3101. On April 17, 2025, Cellspin Soft Inc., the patent owner in IPR2024-00757 etc., filed its Corrected Motion to Terminate, citing public information as purported evidence. IPR2024-00757, Paper 22. Then-Acting Director Stewart initiated *Sua Sponte* review of the raised RPI issues on June 5, 2025. IPR2024-00757, Paper 34. The media extensively reported this development,² which preceded Patent Owner’s Brief in Support of Discretionary Denial (Paper 7, Aug. 23, 2025) and Patent Owner’s Preliminary Response (Paper 12, Sep. 23, 2025). Patent Owner indicated it was aware of the developing media

² *See, e.g.*, <https://www.law360.com/articles/2350333>.

coverage related to Petitioner as of August 2025. *See* Paper 7 at 9. Nonetheless, Patent Owner did not challenge Petitioner’s RPI disclosure until *after* institution.

This sequence of events suggests that Patent Owner had been aware of the potential RPI challenges but intentionally chose to wait and see if the Petition would be instituted on the merits, wasting the Board’s and Petitioner’s time and resources. The Board’s rules “shall be construed to secure the just, speedy, and inexpensive resolution of every proceeding.” *First Quality Baby Products*, Paper 41, 6. That goal “would be frustrated by permitting Patent Owner to seek termination of an inter partes review [...] based primarily on information it already had in its possession prior to institution.” *Id.* Patent Owner’s challenge to Petitioner’s RPI disclosure therefore should be dismissed for its failure to timely raise the issue and proffer evidence.

II. Petitioner Identified TikTok USDS Joint Venture LLC As RPI And Maintains The Filing Date Of The Petition

Petitioner disclosed all RPIs in its Petition and promptly updated its disclosure in full compliance with 37 C.F.R. § 42.8.

A. Petitioner’s Updated Mandatory Notices Identify All RPIs

Petitioner has identified all RPIs and the IPR should proceed. On January 22, 2026, TikTok USDS Joint Venture LLC was “established in compliance with the

Executive Order signed by President Trump on September 25, 2025.”³ On February 11, 2026, in compliance with 37 C.F.R. § 42.8 and out of abundance of caution, Petitioner filed its Updated Mandatory Notices identifying TikTok USDS Joint Venture LLC as an RPI. Paper 16. Because all RPIs have been identified, this IPR should proceed.

B. Petitioner Was Not Required To Meet And Confer With Patent Owner

On May 12, 2026—three months after Petitioner provided its updated notice—Patent Owner filed a paper titled “Objection to Petitioner’s Updated Mandatory Notices.” Paper 17. In that “Objection,” Patent Owner first faults Petitioner for not meeting and conferring with Patent Owner’s counsel prior to the filing of the Updated Mandatory Notices. Paper 17 at 1. Patent Owner, however, cites no authority requiring such a meet and confer. *Id.*

Petitioner’s February 11, 2026, Updated Mandatory Notices were filed in full compliance with 37 C.F.R. § 42.8. Section (a)(3) of 37 C.F.R. § 42.8 requires that an updated notice “must be filed . . . within 21 days of a change of the information listed in paragraph (b) of this section stated in an earlier paper.” TikTok USDS Joint Venture LLC was established on January 22, 2026, and Petitioner’s Updated Mandatory Notices were filed 20 days later. Updating Mandatory Notices in

³<https://newsroom.tiktok.com/announcement-from-the-new-tiktok-usds-jointventure-llc?lang=en>.

compliance with 37 C.F.R. § 42.8(a)(3) within 21 days does not require Board authorization. *Reshape Medical LLC v. Fulfillium, Inc.*, IPR2018-00957, Paper 16, at 4 (Aug. 27, 2018). No authority requires that Petitioner meet and confer with Patent Owner prior to carrying out this obligation.

C. Patent Owner Has Not Shown Any JV Investors Are RPIs

In its “Objection,” Patent Owner does not allege that TikTok USDS Joint Venture LLC is controlled by an unnamed foreign sovereign. Nor could it. In conformance with President Trump’s September 25, 2025, Executive Order, Bytedance retains a 19.9% interest in TikTok USDS Joint Venture LLC,⁴ which, as President Trump determined, is not enough for there to be an “operational relationship” between Bytedance entities and the new Joint Venture that is sufficient for Bytedance to exercise control over the TikTok U.S. platform. Exec. Order No. 14352, 90 Fed. Reg. at 47220.

Indeed, the transaction that resulted in the creation of the Joint Venture was presented to President Trump, who, after “consultation with the National Security Council, the Office of Science and Technology Policy, the Department of the Treasury, the Department of Justice, the Department of Commerce, and the Office of the Director of National Intelligence” definitively “determined” that the

⁴<https://newsroom.tiktok.com/announcement-from-the-new-tiktok-usds-jointventure-llc?lang=en>.

transaction “resolves the[] national security concerns” by “preclud[ing]” any “operational relationship” between Bytedance entities and the new Joint Venture. Exec. Order No. 14352, 90 Fed. Reg. 47219, 47220 (Sept. 25, 2025). The President further determined that the Joint Venture resolves concerns regarding “the control of a foreign adversary . . . because, among other things, the new joint venture [is] based in the United States and less than 20 percent of the joint venture [is] owned or controlled by foreign entities.” *Id.*

Nevertheless, in its “Objection,” Patent Owner faults Petitioner for not disclosing additional investors in TikTok USDS Joint Venture LLC as RPIs. Paper 17 at 2-3. But Patent Owner offers no basis to suggest that any of the investors have any degree of control over the IPR proceeding to render them RPIs. *Id.* The Board has long held that a passive investor is not an RPI absent evidence of control or direction. *Coal. for Affordable Drugs II LLC v. NPS Pharms., Inc.*, No. IPR2015-01093, Paper 26 (Oct. 23, 2015) (holding that where “the evidence does not suggest that any investor in a named RPI directed Petitioner or a named RPI [...] to challenge the [challenged patent]” such “passive” investors are not RPIs). Further, the Federal Circuit confirms that even if an entity has authority to manage financial assets of an RPI, such a managing entity is not an RPI absent evidence that it “exercised any control over [the IPR] proceedings.” *VirnetX Inc. v. Mangrove Partners Master Fund, Ltd.*, 778 F. App'x 897, 903 (Fed. Cir. 2019). Patent Owner fails to identify

any evidence that any of the investors had any direction or control over the instant IPR proceeding.

D. Patent Owner’s “Objection” Paper Is Late And Improper

As discussed, Patent Owner’s May 12, 2026 “Objection” is effectively a Motion to Strike Petitioner’s Updated Mandatory Notices. But Patent Owner’s motion does not identify any of Petitioner’s evidence it objects to.

This Motion to Strike is also late. Patent Owner did not seek the Board’s permission to file the motion, as 37 C.F.R. § 42.20(b) requires. That is likely because Patent Owner had already missed the deadline to request to file such a motion. “Generally, authorization to file a motion to strike should be requested *within one week* of the allegedly improper submission.” PTAB Trial Practice Guide, November 2019, 46 (emphasis added). Patent Owner filed its motion more than three months after Petitioner’s Updated Mandatory Notices. Patent Owner’s retitling of the motion as an “Objection” does not avoid the impact of this rule.

III. Conclusion

For the reasons above, Petitioner respectfully submits that the IPR should be remanded to the panel for a decision on the merits.

Dated: June 3, 2026

Respectfully Submitted,

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Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on June 3, 2026, a true and correct copy of the foregoing document was served electronically on Patent Owner's lead and backup counsel at the following addresses:

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Dated: June 3, 2026

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