

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

QINGQING DUAN,
Petitioner,

v.

PATHWAY IP LLC,
Patent Owner.

Case No. IPR2025-01231
U.S. Patent No. 7,841,729 B2

**PATENT OWNER'S CONDITIONAL MOTION TO TERMINATE
FOR FAILURE TO NAME ALL REAL PARTIES IN INTEREST
UNDER 35 U.S.C. § 312(a)(2)**

I. RELIEF REQUESTED

As set forth in Patent Owner’s 9/1/2026 email to the Board, Patent Owner seeks an order establishing that Shenzhen Neewer Technology Co., Ltd. (“Neewer”) and iphotoxx are real parties in interest, preclusion from contesting that finding, correction of Petitioner’s mandatory notices with the proceeding continuing to a final written decision, compensatory expenses, and in the alternative, judgment in the trial under 37 CFR 42.12(b)(8). Additional discovery regarding funding; the false statements made by Petitioner and its counsel; and the assertion of a joint defense that involves Neewer, iphotoxx, and Ms. Duan is also warranted. However, the Board has deferred a decision on allowing the requested motion(s).

Accordingly, pursuant to the Board’s Order of 7/10/2026 (Paper 29), Patent Owner Pathway IP LLC conditionally moves to terminate this proceeding because the Petition does not identify all real parties in interest as 35 U.S.C. § 312(a)(2) requires. This is requested only if the relief requested above is denied.

At institution the Board accepted Petitioner’s identification on the preliminary record, finding “nothing in the current record indicating that another party is controlling, funding, or directing this proceeding,” and invited the parties to “further develop the record after institution.” Paper 12, 10–11. Every fact below comes from Petitioner’s own production, privilege log, counsel, or sworn testimony.

II. FACTS ESTABLISHED BY THE AUTHORIZED DISCOVERY

A. Neewer created, populated, and participated in the channel in which the Petition was prepared

Petitioner’s First Amended Privilege Log identifies all nine participants of WeChat group “ILND-24-5218-环形灯” as of 7/7/2025 — the date counsel transmitted the draft Petition for review and signature: Qingqing Duan; five Glacier Law LLP attorneys; Jun Wang, General Manager of Neewer; Ting Peng of Neewer; and Jie Chang, representative of iphotoxx, a co-defendant in *Pathway IP LLC v. The Individuals*, No. 1:24-cv-05218 (N.D. Ill.). Exh. 2047; Exh. 2048.

Petitioner’s counsel explains the group’s origin: “Mr. Wang created the group for communications concerning the ILND action in 2024, and it has served as the channel for that joint defense.” Exh. 2048. Neewer’s General Manager built the channel a year before the Petition existed; Petitioner’s counsel used it to deliver the draft Petition; and two Neewer employees and a co-defendant received it. Ms. Duan testified that [REDACTED]. Exh. 2049, 92:3–5.

B. Petitioner is a Neewer employee who operated a Neewer-supplied shell

[REDACTED]
[REDACTED]. Exh. 2049, 16:11–17:5, 20:13–16. [REDACTED]
[REDACTED]
[REDACTED] *Id.* 33:17–20. [REDACTED]
[REDACTED]
[REDACTED] *Id.* 29:5–30:10, 32:14–19. Ronglida never had an employee, and its RMB 30,000 of registered capital was “subscribed but was not actually paid or contributed.” Exh. 2050 (Resp. to RFP 9); [REDACTED].

[REDACTED]
[REDACTED]
[REDACTED] Exh. 2049, 42:1–
46:19, 55:11–24. [REDACTED]
[REDACTED] *Id.* 73:14–75:16. [REDACTED]
[REDACTED] *Id.*
76:19–79:15.

C. An unnamed third party funded the proceeding

[REDACTED]
[REDACTED]
[REDACTED]
Exh. 2052 (PET_0038-0039); Exh. 2053 (PET_0040-0041). [REDACTED] has never
been identified in this proceeding. Ms. Duan testified [REDACTED]
[REDACTED]
Exh. 2049, 58:16–59:14, 68:5–12. [REDACTED] *id.* 95:23–
96:12; [REDACTED] *id.*
63:19–64:12; [REDACTED]
[REDACTED] *id.* 62:10–14.

Counsel’s own records name the beneficiary. Glacier Law’s checks to prior
counsel read [REDACTED]
[REDACTED] Dinsmore & Shohl’s
4/14/2025 engagement letter [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] Exh. 2056 (PET_0002–0012). Neither Ronglida nor Ms. Duan has any engagement agreement with Glacier Law. Exh. 2050 (Resp. to RFP 4A); [REDACTED].

III. LEGAL STANDARD

A petition may be considered only if it “identifies all real parties in interest.” 35 U.S.C. § 312(a)(2). “Congress intended that the term ‘real party in interest’ have its expansive common-law meaning.” *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1351 (Fed. Cir. 2018) (“AIT”). The inquiry “demands a flexible approach that takes into account both equitable and practical considerations, with an eye toward determining whether the non-party is a clear beneficiary that has a preexisting, established relationship with the petitioner.” *Id.* The Board also weighs funding and the non-party’s “relationship to the petition itself, including the nature and/or degree of involvement in the filing.” Consolidated Trial Practice Guide (CTPG) 16–18. Once the patent owner produces some evidence, the burden of persuasion remains with the petitioner. *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1242 (Fed. Cir. 2018); *Ventex Co. v. Columbia Sportswear N. Am., Inc.*, IPR2017-00651, Paper 152 (PTAB Jan. 24, 2019) (precedential).

IV. NEEWER AND IPHOTOXX ARE REAL PARTIES IN INTEREST

A. Neewer

Neewer’s role is documented by Petitioner, not inferred from association. Neewer’s General Manager created the channel through which the Petition was prepared and approved, Exh. 2047; Exh. 2048; he and a second Neewer employee

received the draft before filing, Exh. 2047; Exh. 2048, and [REDACTED]

[REDACTED], Exh. 2049, 92:3–5. Neewer [REDACTED]

[REDACTED] That is the “preexisting, established relationship” *AIT* describes, and Neewer — whose brand and products are the subject of the ’5218 litigation — is the clear beneficiary of cancellation.

Petitioner’s own privilege assertion confirms it. To withhold PL-001 and PL-002, Petitioner invokes “common interest / joint defense.” Exh. 2047; Exh. 2048. That doctrine presupposes a shared legal interest. *In re Regents of the Univ. of Cal.*, 101 F. 3d 1386, 1389 (Fed. Cir. 1996) (for the common interest doctrine to protect communications, the clients must share a common legal interest). Petitioner cannot claim a common legal interest with Neewer while maintaining that Neewer is a stranger to this proceeding.

B. iphotoxx

Jie Chang received the draft Petition as “representative of iphotoxx.” Exh. 2047; Exh. 2048. iphotoxx is a co-defendant with \$25,330,645.13 in accused sales — more than 600 times Petitioner’s \$41,205.61. Exh. 2028 ¶ 2. A co-defendant that reviews the draft petition before filing, stands to gain most from cancellation, and bears no § 315(e) estoppel is a clear beneficiary with a preexisting relationship to the filer.

Moreover, as set forth in Patent Owner’s preliminary response, Neewer has sworn in court filings that sales by iphotoxx on Amazon were “its” (i.e., Neewer’s) sales; in other words, the two are the same. Paper 7 (citing Exh. 2029).

C. The concealed funding

Funding is a core consideration. CTPG 17. In *Corning Optical Communications RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015) (precedential), payment and engagement records established an unnamed real party in interest. Here, [REDACTED] reached Petitioner’s counsel from an entity appearing nowhere in this record, [REDACTED].

As noted above, Ms. Duan testified [REDACTED] Exh. 2049, 58:16–59:14, 68:5–12. This is not credible, as [REDACTED] *id.* 95:23–96:12; [REDACTED] *id.* 63:19–64:12; [REDACTED] *id.* 62:10–14. It is clear that neither Ronglida nor Ms. Duan is behind the payments.

V. THE NON-DISCLOSURE WAS NOT A GOOD-FAITH OMISSION

Petitioner – through the Glacier Law Firm – served a written response representing that “counsel transmitted a draft of the Petition to Petitioner Qingqing Duan,” Exh. 2050 (Resp. to RFP 1), and a privilege log describing that transmission as a “[c]onfidential counsel-client transmittal ... to the client.” Exh. 2057 (original privilege log). Petitioner’s counsel authored the communication and knew the membership of the group counsel itself used. Petitioner separately answered that it located “no responsive documents” reflecting communications with Neewer concerning any challenge to the ’729 patent. Exh. 2050 (Resp. to RFP 6A). That

false response remains uncorrected. And even though the group was formed in 2024 “for communications concerning the ILND action” and “served as the channel for that joint defense,” Exh. 2048, Petitioner’s counsel has failed to provide any communications or identify any communications apart from the two 7/7/2025 documents in its privilege log. This is a clear discovery violation.

The true recipient list surfaced only because Patent Owner [REDACTED]

[REDACTED]. Exh. 2049, 86:12–19, 89:8–13. Five attorneys from the Glacier Law Firm were members of the communication group, but Glacier amended the log only after the falsity was exposed in the deposition. Exh. 2047; Exh. 2048. Petitioner also certified on 7/15/2026 that Ms. Duan is “the sole real party-in-interest,” five months after someone else’s money reached its counsel and sixteen days before producing the confirmations. Paper 30. The non-disclosure was not made in good faith.

VI. PREFERRED ALTERNATIVE RELIEF

If the Board finds Neewer and iphotoxx to be real parties in interest, § 312(a)(2) can be satisfied without ending this proceeding. *Lumentum Holdings LLC v. Capella Photonics, Inc.*, IPR2015-00739, Paper 38 (PTAB Mar. 4, 2016) (precedential), holds that § 312(a)(2) is not jurisdictional and that a real-party-in-interest identification may be corrected without altering the filing date. Patent Owner does not dispute that *Lumentum* is available – to the contrary, Patent Owner specifically requests its application. Applied here, it permits the Board to establish the omitted real parties in interest under 37 C.F.R. § 42.12(b)(1), preclude Petitioner from contesting that finding under § 42.12(b)(3), order the mandatory notices

corrected to name Neewer and iphotoxx, and proceed to a final written decision on the instituted grounds.

That course serves § 312(a)(2) better than termination. The requirement exists to ensure that parties sufficiently close to a petitioner are bound under 35 U.S.C. § 315(e), and to protect patent owners from successive attacks by related parties. Termination binds no one and leaves the entities that prepared, funded, and stand to benefit from this Petition free to press the same invalidity theories elsewhere. Correction followed by a final written decision binds them. Nor does that course risk a second petition: every defendant in the '5218 litigation was served on August 6, 2024, so any new petition is barred by 35 U.S.C. § 315(b).

Section 315(b) also answers the observation the Board made at institution. The Board noted that Patent Owner “does not assert that the Petition would be time-barred pursuant to 35 U.S.C. § 315(b) if any of the alleged RPIs were so named.” Paper 12, 11 n.12. That is correct: every defendant in the '5218 litigation was served on August 6, 2024, and the Petition was filed within one year of that date. But the absence of a time bar does not mean the omission is without consequence. The consequence is estoppel. Section 315(e) reaches “the petitioner, or the real party in interest or privy of the petitioner” — but only where the proceeding “results in a final written decision under section 318(a).” Termination yields no such decision. Correction, followed by a final written decision, yields one that binds Neewer and iphotoxx.

Patent Owner has requested authorization to file a motion under 37 C.F.R. § 42.12 seeking that relief together with the evidentiary and monetary sanctions this

record supports. Patent Owner understands that the Board has deferred consideration of that request pending completion of this briefing, and respectfully submits that the record above supports authorizing it. But if the Board denies that request, this case cannot proceed with the incorrect real party in interest and must be terminated under 35 U.S.C. § 312(a)(2). Given the egregious conduct in this case, termination would be a gift to Petitioner – and ultimately to Neewer and iphotoxx.

VII. CONCLUSION

The Petition failed to name Shenzhen Neewer Technology Co., Ltd. and iphotoxx as real parties in interest and concealed the entity that funded this proceeding. Leave is warranted for Patent Owner to request that the Board establish those facts, order Petitioner's identification corrected, and proceed to a final written decision; or, in the alternative, judgment in the trial under 37 CFR 42.12(b)(8). If the Board ultimately denies that relief, Patent Owner requests that the proceeding be terminated under 35 U.S.C. § 312(a)(2). In any event, Patent Owner should also be allowed to seek compensatory expenses.

Dated: September 4, 2026

Respectfully submitted,

/A. Justin Poplin/
A. Justin Poplin, Reg. No. 53,476
Hissan Anis, Reg. No. 65,943
AVEK IP, LLC
7285 W. 132nd St., Suite 340
Overland Park, KS 66213
(913) 303-3841
Counsel for Patent Owner

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Motion complies with the ten (10) page limit authorized by the Board's Order of July 10, 2026 (Paper 29).

Dated: September 4, 2026

/A. Justin Poplin/
A. Justin Poplin, Reg. No. 53,476

CERTIFICATE OF SERVICE

The undersigned certifies that on the date below a complete copy of the foregoing was served by electronic mail pursuant to 37 C.F.R. § 42.6(e) upon counsel of record for Petitioner:

Raymond Y. Chan — raymond.chan@glacier.law
Benjamin E. Weed — ben.weed@glacier.law
Wei Wang — wei.wang@glacier.law

Dated: September 4, 2026

/A. Justin Poplin/
A. Justin Poplin, Reg. No. 53,476