UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, LLC,
Petitioner

v.

MOTION OFFENSE, LLC,
Patent Owner

IPR2020-00705
U.S. Patent No. 10,013,158

PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO DISMISS AND TERMINATE

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
US Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

I. INTRODUCTION

The Board should exercise its discretion and deny Unified Patents, LLC's ("Unified") Motion to Dismiss and Terminate (the "Motion"). The Board has discretion to "grant, ***deny***, or dismiss ***any*** petition or ***motion***," and to "enter ***any appropriate order***." 37 CFR § 42.71(a).[1] This case is a perfect example where the Board should exercise its discretion and ***deny the Motion***. As discussed below, Unified's Motion is a thinly-veiled attempt to avoid a finding that it improperly omitted its members as real-parties-in-interest ("RPIs") and protect its business model built on exploiting the patent system against patent owners.

II. ARGUMENT

Unified's primary argument is that Patent Owner will not be prejudiced. Not so. If the Motion is granted, Patent Owner would be deprived of the benefit of a finding as to whether Unified has misused the patent system by omitting its members as RPIs. This is not trivial. [redacted] This not only

[1] Unless indicated otherwise, all emphases are added.

protects Motion Offense, but also ***all*** patent owners in general from such abusive practices. Motion Offense will also benefit to the extent the decision on institution addresses the merits and finds that Unified failed to meet its threshold evidentiary burden as set forth in Patent Owner's Preliminary Response (Paper 8) ("POPR").

Unified's Motion offers nothing more than an illusory basis for dismissal built on attorney argument. Unified suggests it seeks "to reallocate its budgets and resources, including, in light of the COVID-19 pandemic" (Motion at 1), but fails to explain why it selected ***this particular matter*** for dismissal instead of its other multiple pending IPRs. It provided no declaration discussing its decision to select this particular case, its financial status, or other means being taken to cut costs. It has constructed a house of cards that cannot stand.

Patent Owner is unaware of any other matters in which Unified has recently sought to withdraw its petition due to the COVID-19 pandemic or other business reasons. And Unified has not identified any in its reply. Instead Unified's Motion appears to be nothing more than attempt to avoid the unfavorable facts present in this matter regarding RPIs. In other words, the failure to provide ***any basis*** as to why it chose ***this matter*** for dismissal, as opposed to another, can only be seen as a tacit acknowledgment that this matter is a significant risk to its business and its practice of not identifying paying and benefitting [redacted].

Unified has also not explained why withdrawing one petition is necessary for reallocating its budget. And Unified provides no basis whatsoever as to why ***this petition*** was chosen to be terminated instead of one of the many other currently pending petitions it has filed. Instead, Unified only states "[n]ot so. In over 200 matters, whenever challenged, Unified has always been found to be the sole real-party-in-interest in its proceedings," (Motion at 4), with no further evidence that it properly named all RPIs in ***this petition***. Unified's repeated citation to the "over 200 matters" shows the importance of this fact and exposes that ***this petition*** was the only one of many candidates selected for termination due to the risk it poses to Unified's business model built of exploiting the patent system.

As detailed in POPR, the facts here weigh strongly against Unified and demonstrate its precarious position. [redacted]

This is also not a situation where Unified can remedy its mistake. [redacted] Thus, the facts show that Unified's true motivation for seeking to terminate the proceeding is to protect its entire business model of serving as an avatar for its paying members.

Unified's argument that the motion will not prejudice Patent Owner fails to address the above considerations and only takes into account its own benefit—namely, cutting its own costs and protecting its business after reviewing the POPR and realizing the significant risk of an adverse ruling. Unified should not be allowed to hide behind a blanket assertion that it "seeks to reallocate its budgets and resources," (Motion at 1). Petitioner's true goal is protecting its business model.

As further evidence of Unified's focus on its own interests, when conferring prior to the filing of the Motion, Patent Owner made an offer to Unified requesting reimbursement for its fees related to the POPR. Unified declined. That further prejudices Patent Owner. Unified only decided to withdraw its petition after Motion Offense spent substantial resources preparing its POPR.

Unified also argues that the Motion should be granted due to the petition's preliminary status. (Motion at 2-3.) It asserts it "is not aware of any example wherein the Board found that it could not—or would not—terminate a proceeding at Petitioner's request to withdraw prior to institution." (Motion at 3.) Unified ignores contrary authority. The Board ***can*** and ***has*** denied a petitioner's opposed motion to dismiss prior to a decision on institution. *See LG Electronics, Inc., v. Koninklijke KPN N.V.*, IPR2018-00551, IPR2018-00553, and IPR2018-00554, Paper 10 (PTAB August 1, 2018). There, mere opposition by the patent owner was a sufficient basis for denial. The Board has also denied opposed motions to dismiss in other matters.

See, e.g., *Fresenius Kabi USA, LLC v. AstraZeneca AB*, IPR2017-01910, IPR2017-01912, and IPR2017-01913, Paper 7 (PTAB Nov. 2, 2017). Here, Motion Offense presents reasons beyond mere opposition. It, and all patent owners, will be prejudiced by such abusive practices if the Motion is granted.

Unified's accusations that Patent Owner is acting hypocritically are also misplaced. (Motion at 3-4.) There is a fundamental difference between resolution of the action through a decision denying institution based on the facts versus withdrawal before a decision is made. To be clear, Motion Offense has a significant interest in the RPI issue being decided [redacted]. It will also benefit from a finding that Unified failed to meet its evidentiary threshold. These are all proper reasons for denying the Motion.

In sum, Unified is clearly concerned about its business based on filing petitions as the ***sole*** RPI. Unified advertises that paying members can and will benefit from Unified targeting shared enemies while avoiding estoppel. Members expect anonymity and a shield against estoppel and pay for it. One loss on this RPI issue jeopardizes this entire practice. Allowing Unified to selectively withdraw IPR petitions at will, and over patent owners' opposition, only encourages Unified and similar entities to continue these abusive practices harassing patent owners.

III. CONCLUSION

For the above reasons, Unified's Motion be denied.

Dated: September 15, 2020

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on September 15, 2020, the foregoing document is being served via electronic mail upon the following counsel of record for Petitioner:

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