

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

COMMSCOPE, INC.
Petitioner

v.

TQ DELTA, LLC,
Patent Owner

Case: IPR2023-00066
Patent No. 7,836,381

SUR-REPLY TO PETITIONER'S MOTION FOR JOINDER

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Pursuant to the Board’s January 9, 2023 authorization, Patent Owner TQ Delta, LLC (“TQ Delta” or “Patent Owner”) submits this Sur-Reply to the Motion filed by CommScope, Inc. (“CommScope” or “Petitioner”) to join these proceedings with the *Nokia of American Corp. v. TQ Delta, LLC* proceedings in IPR2022-0665 (the “*Nokia* proceedings”). Petitioner’s Reply ignores two critical facts: (1) the Board has terminated the *Nokia* proceedings in full and (2) the Board recently denied Petitioner’s similar joinder motion because, after termination of the *Nokia* proceedings in that case, “[t]here is no pending proceeding . . . for Petitioner to join.” *CommScope, Inc. v. TQ Delta, LLC*, Decision Denying Motion for Joinder (Paper 13) at 4, IPR2022-01443 (P.T.A.B. Dec. 13, 2022) (the “-1443 Case”).

TQ Delta expected Petitioner to withdraw this Motion after the Board’s decision in the -1443 Case. But that did not happen. Petitioner instead filed a Reply—ten days after the Board’s decision—that continues to press for joinder, omits the Board’s decision in the -1443 Case, and largely ignores the termination of the *Nokia* proceedings. But the same outcome from the -1443 Case applies here. There is no pending proceeding to join, and this Motion should be denied.

Indeed, Petitioner does not cite to any authority permitting joinder to a terminated proceeding. There is no such power. But even if there were, the termination of the *Nokia* proceedings skews the joinder factors solidly against Petitioner. TQ Delta respectfully requests that the Board deny the Motion.

I. The Motion Is Moot Because There Is No Proceeding To Join

In the proceedings Petitioner seeks to join, the Board ordered on December 8, 2022 “that these proceedings are *terminated* as to all parties[.]” *Nokia of Am. Corp. v. TQ Delta, LLC*, Termination (Paper 23) at 3, IPR2022-00665 (P.T.A.B. Dec. 8, 2022) (emphasis in original). Because the Board has terminated the proceedings, there is nothing to join. Petitioner’s Motion is thus moot and should be denied.

Petitioner does not cite any authority for joining a proceeding that has already been terminated. Indeed, Petitioner’s Reply omits the Board’s decision in the -1443 Case—which denied Petitioner’s joinder motion because, after termination of the *Nokia* proceedings there, “[t]here is no pending proceeding . . . for Petitioner to join.” *CommScope, Inc. v. TQ Delta, LLC*, Decision Denying Motion for Joinder (Paper 13) at 4, IPR2022-01443 (P.T.A.B. Dec. 13, 2022).

However, the Board terminated the ’471 IPR based on settlement between the parties, noting the Board’s policy goal of fostering settlements. IPR2022-00471, Paper 41. There is no pending proceeding in the ’471 IPR for Petitioner to join. As a result, Petitioner’s request to join the ’471 IPR is denied.

That same outcome applies here. The cases cited by Petitioner do not apply because, in those cases, the Board declined to terminate the proceedings as to all parties. See Reply at 3 (citing *AT&T Services, Inc. v. Convergent Media Solutions, LLC*, IPR2017-01237, Paper 10 (PTAB. May 10, 2017) and *Qualcomm Inc. v. Bandspeed, Inc.*, IPR2015-00314 Paper 21 (PTAB, Nov. 16, 2015)). The Board only

terminated the original petitioner—but not the patent owner. The Board continued the proceedings with the patent owner and the new, joined petitioner. *See, e.g., AT&T Services, Inc. v. Convergent Media Solutions, LLC*, IPR2017-01237, Paper 15 (PTAB. May 10, 2017) (“Due to the joinder of this proceeding and IPR2017-01237, AT&T Services, Inc. remains a petitioner in this proceeding after the termination of Netflix. Therefore, it is inappropriate to terminate CMS from this proceeding.”); *Qualcomm* at 8 (“As to the Motion to Terminate (Paper 17), 35 U.S.C. § 317(a) states ‘[i]f no petitioner remains in the inter partes review, the Office may terminate the review or proceed to a final written decision under section 318(a).’ Because Qualcomm remains a petitioner, we do not terminate IPR2015-00314.”).

Here, unlike *AT&T* and *Qualcomm*, the Board has already terminated the *Nokia* proceedings “as to all parties[.]” *Nokia Termination* at 3. There are no proceedings to join. The Motion should be denied, as it was in the -1443 Case.

II. Petitioner Fails To Identify Any Authority To Join Petitioner To The Terminated *Nokia* Proceedings

Petitioner does not identify any authority for joining a terminated proceeding. Without any authority to act, the agency lacks the power to grant Petitioner’s requested relief. *See, e.g., SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1355 (2018) (rejecting argument that the agency had a “partial institution” power where the America Invents Act (“AIA”) did not provide that power).

It is a basic legal principle that a party cannot join a proceeding that has

conclusively ended after a settlement. *See, e.g., Ericsson Inc. v. InterDigital Communs. Corp.*, 418 F.3d 1217, 1221 (Fed. Cir. 2005) (upholding denial of intervention because the law required “there be an existing suit in which to intervene” and the underlying case had already settled and been dismissed).

The AIA similarly presupposes joinder to a pending proceeding—not a terminated one. Section 315(c) requires that the proceeding is “instituted”: “[i]f the Director institutes an inter partes review, the Director, in his or her discretion, may join as a party to that inter partes review” 35 U.S.C. § 315(c). By statute and by regulation, the Board’s termination of an IPR conclusively ends the proceeding. *See, e.g.*, 35 U.S.C. § 317(a) (“If no petitioner remains in the inter partes review, the Office may terminate the review”); 37 C.F.R. § 42.72 (“The Board may terminate a trial without rendering a final written decision, where appropriate”); 37 C.F.R. § 42.2 (“Judgment means a final written decision by the Board, or a termination of a proceeding.”).

Indeed, the Board’s decision here underscores that the termination ended the proceeding. The Board terminated the proceeding as to all parties and then “*dismissed* as moot” TQ Delta’s pending rehearing requests. *Nokia Termination at 3* (emphasis in original). This further reflects that the *Nokia* proceedings have conclusively ended (otherwise the rehearing requests would remain live).

Petitioner does not identify any authority to join a party to terminated

proceedings. That result would not make any sense. The Motion should be denied.

III. Granting Petitioner's Motion Is Inappropriate

Even if there were a power to join Petitioner to the *Nokia* proceedings, the termination of those proceedings further shows that joinder is not appropriate. Joinder would wholly circumvent Section 315(b)'s one-year bar, which the Reply does not address. After claiming that it would be an "understudy," Petitioner now would be the only IPR petitioner after the termination of the *Nokia* proceedings. That outcome is an abuse of the IPR process: Petitioner has been sued twice for infringement and never attempted to timely file IPR petitions. It instead challenged validity in court and lost in 2019—raising the same primary prior art it asserts here.

The termination of the *Nokia* proceedings also means that any proceeding would require a new trial schedule, which further weighs against joinder. The Board terminated the *Nokia* proceedings before the deadline to submit the Patent Owner's Response and prior to any discovery. This scheduling delay weighs against joinder.

Joinder will also prejudice TQ Delta: it would now have to participate in proceedings that have been terminated. There is no authority for that absurd result.

IV. Conclusion

TQ Delta respectfully requests the Board deny Petitioner's Motion. TQ Delta also respectfully requires that the Board consider any other appropriate relief in view of the arguments and omissions in Petitioner's Reply.

Dated: January 23, 2023

Respectfully submitted,
THE DAVIS FIRM PC

By: Christian J. Hurt
Christian J. Hurt

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2023, a true copy of the following document(s):

**PATENT OWNER TQ DELTA, LLC'S SUR-REPLY TO PETITIONER'S
MOTION FOR JOINDER**

was served via *electronic mail* to the address and parties as follows:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 23, 2023 at Southlake, Texas.

/Christian J. Hurt/
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