

Filed on behalf of Pi-Net International, Inc.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAP AMERICA, INC.
Petitioner

v.

PI-NET INTERNATIONAL, INC.
Patent Owner

CASE CBM2014-00018
Patent 8,037,158

**PATENT OWNER PI-NET INTERNATIONAL, INC.'S CONDITIONAL
OPPOSITION TO PETITIONER'S MOTION FOR JOINDER**

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Patent Owner Pi-Net International, Inc. ("Patent Owner") conditionally opposes petitioner SAP's ("Petitioner") motion for joinder of the above referenced petition for covered business method review ("Second Petition") with the previously instituted covered business method review ("First Petition") Case No. CBM 2013–00013.

I. Introduction

Patent Owner opposes the motion for joinder because the schedule set forth for the First Petition is irreconcilably different from the schedule that is reasonably expected to be set forth for the Second Petition. In fact, adopting the First Petition schedule in the for the Second Petition will leave no time for Patent Owner to respond to any decision to institute based on the second petition.

Patent Owner, however, would not oppose a reasonable extension of the schedule for the First Petition (and the IPRs, namely, IPR2013-00194 and IPR2013-00195) and Joinder of the second petition therewith, assuming that such extension is reasonable and would allow appropriate periods of response for Patent Owner.

Petitioner's Statement of Material Facts appears to be correct.

II. Argument

A. It Is Not Realistic To Accommodate The Schedule For The Second Petition Within The Schedule Of The First Petition

Patent Owner opposes the motion for joinder because the schedule for the First Petition is irreconcilably different from the schedule that is reasonably expected to be set for the Second Petition. Patent Owner already has been required to respond to the Second Petition (filed October 21, 2013) by submitting its Preliminary Response thereto concurrently herewith – a period shortened from the three months suggested in 77 Fed. Reg. 48756 at 48757 to one-half that. Despite this contraction time, adopting the First Petition schedule for the Second Petition would leave no time for Patent Owner to respond to any decision to institute a review based on the Second Petition:

Due Date 1 in the First Petition (the response to the petition and any motions to amend) has been extended, by agreement of the parties, to January 3, 2014. It is unlikely that the Board would institute any review based on the Second Petition prior to January, 2014.¹ This would leave no time for Patent Owner to submit its response to the Decision, and any motions to amend, if the dates for the Second Petition were shoehorned into the schedule for the First Petition.

¹ Even if it did, it would leave essentially no time, as a practical matter, for Patent Owner to file its response.

Patent Owner strenuously opposes joinder of the Second Petition with the first if the result of such joinder is a schedule that does not provide reasonable and sufficient time for it to respond to deadlines associated with the Second Petition. Petitioner, not Patent Owner, submitted the Second Petition, essentially seeking a second bite at the apple. Patent Owner, a small company with modest resources relative to those of Petitioner's, is doing its best to respond thereto. It should not be prejudiced by a procedure which was not at its own choosing, based upon an artificially shortened schedule.

B. If The Schedule For The First Petition Is Extended, It May Accommodate The Schedule For The Second Petition

A reasonable extension of the First Petition schedule (and those of the IPRs, namely, IPR2013-00194 and IPR2013-00195), as specifically provided by rule 42.100(c), may allow for joinder as requested by Petitioner. If the Board grants a reasonable extension, that allows Patent Owner to respond to deadlines associated with the Second Petition within reasonable time periods, Patent Owner does not oppose joinder under such circumstances. Patent Owner also views such joinder, including the associated IPRs, under appropriate circumstances, as appropriate, insofar as there are overlapping issues between the petitions.

It is noted that rule 42.100(c) specifically provides for an extension of the overall schedule of up to six months, “for good cause.” It is hard to imagine a more

appropriate circumstance, and Patent Owner respectfully requests that it be granted such accommodation. Patent Owner also notes that Petitioner's counsel, during the telephone conference of November 4, 2013, indicated that Petitioner was amenable to, and would not oppose, an extension of the schedules to accommodate joinder.

III. Conclusion

Accordingly, Patent Owner opposes any joinder that will result in unrealistic, burdensome and unfair time periods in which to respond to the Second Petition. Patent Owner, however, does not oppose joinder if the schedules for the First Petitions (and those of the associated IPRs) are extended to allow for reasonable response periods for the Second Petition.

Respectfully submitted,

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