



UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VENTEX CO., LTD.,
Petitioner,

v.

COLUMBIA SPORTSWEAR NORTH AMERICA, INC.,
Patent Owner.

Case IPR2017-00651
Patent 8,424,119 B2

Before JOSIAH C. COCKS, MITCHELL G. WEATHERLY, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

ORDER

Dismissing the Petition, Vacating Institution of *Inter Partes* Review, and
Terminating *Inter Partes* Review
35 U.S.C. § 315(b) and 37 C.F.R. §§ 42.71(a), 42.72

I. INTRODUCTION

A. Summary

Ventex Co., Ltd. (“Ventex” or “Petitioner”) filed a Petition for *inter partes* review of claims 1, 2, 8, 15, 16, and 20 of U.S. Patent No. 8,424,119 B2 (Ex. 1001, “the ’119 patent”). Paper 1 (“Pet.”). We instituted trial to determine whether: (1) claims 1, 2, 8, 15, 16, and 20 are unpatentable as obvious under 35 U.S.C. § 103 over Fottinger;¹ and (2) claim 2 is unpatentable as obvious under 35 U.S.C. § 103 over Fottinger and Harber.² Paper 17.

After institution of trial, Columbia Sportswear North America, Inc. (“Columbia” or “Patent Owner”), filed a Patent Owner Response. Paper 27 (“PO Resp.”). Ventex replied. Paper 45 (“Pet. Reply”). Columbia also filed a Motion to Amend. Paper 26. Ventex filed an Opposition to that Motion to Amend. Paper 44. Columbia filed a Reply to that Opposition. Paper 48. Ventex filed a Sur-reply. Paper 54. Columbia filed a Sur-sur-Reply.³ Paper 57. Oral argument was conducted on April 26, 2018. A transcript of that oral argument was entered in the record. Paper 63.

On July 25, 2018, the Chief Administrative Patent Judge, based on delegated authority from the Director, determined that good cause existed to extend the one-year period for issuing a Final Written Decision in this

¹ U.K. Patent App. No. GB 2,073,613 issued Oct. 21, 1981. Ex. 1003 (“Fottinger”).

² U.S. Patent Pub. No. 2006/0179539 A1 published Aug. 17, 2006. Ex. 1004 (“Harber”).

³ Ventex’s Sur-reply and Columbia’s Sur-sur-reply were authorized by the panel. *See* Paper 52.

proceeding. Paper 64. This panel subsequently issued an Order seeking “input from the parties regarding the potential impact of [*Applications in Internet Time, LLC v. RPX Corporation*, 897 F.3d 1336 (Fed. Cir. 2018) (“*AIT*”)] on issues raised in [this] proceeding[] regarding the statutory bar under 35 U.S.C. § 315(b).” Paper 65, 3. As a result of that Order, the parties have submitted multiple filings in this proceeding. Those filings include Columbia’s multiple Motions for Additional Discovery (Papers 67, 79, 80, 107, 108), Ventex’s corresponding Oppositions (Papers 71, 84, 85, 120, 121), and Columbia’s Replies (Papers 72, 124, 125). The parties have also each filed briefing directed to the issue of a statutory time bar under 35 U.S.C. § 315(b) (Papers 99, 100, 103, 104), and corresponding responses and replies (Papers 115, 116, 118, 119, 132, 133).^{4,5} Specifically, as a part of that briefing, Columbia contends that Ventex was time barred pursuant to 35 U.S.C. § 315(b) from filing the Petition in this proceeding, while Ventex disagrees.

For the reasons set forth herein and based on the record that has now been developed, we determine that Ventex did not meet its burden of showing that the Petition was not time barred pursuant to 35 U.S.C.

⁴ All of the noted filings include a public version and a sealed version.

⁵ The record also includes the following filings: (1) multiple Motions to Seal from both parties (Papers 24, 75, 82, 86, 102, 106, 109, 111, 114, 117, 123, 126, 131, 137, 140, 142); (2) Columbia’s Motion to Exclude Evidence pursuant to 37 C.F.R. § 42.64 (Paper 51); and (3) Columbia’s Motion for Sanctions (Paper 136). The Motion to Exclude Evidence is dismissed as moot in this Order. The Motions to Seal and Motion for Sanctions will be addressed in a separate Order or Orders.

§ 315(b). Accordingly, we dismiss the Petition, vacate our Decision to Institute (Paper 17), and terminate the *inter partes* review (or “IPR”).

B. Related Matters

Ventex and Columbia identify the following district court proceeding as a related matter: *Columbia Sportswear North America, Inc. v. Seirus Innovative Accessories*, No. 3:15-cv-00064-HZ (D. Or.) (the “Seirus Litigation”). Pet. 5; Paper 3, 2. Petitioner and Patent Owner also identify *Ventex Co., Ltd. v. Columbia Sportswear North America, Inc.*, IPR2017-00789 as a related matter because it involves a patent closely related to the ’119 patent, U.S. Patent No. 8,453,270 B2 (“the ’270 patent”).⁶ Pet. 4; Paper 3, 2. Ventex also asserts that certain proceedings before the Korean Intellectual Property Trial and Appeal Board and the Supreme Court of Korea are related matters because they involve a Korean patent related to the ’119 patent. *See* Pet. 4–5.

II. ANALYSIS

It is “the IPR petitioner [who] bears the burden of persuasion to demonstrate that its petitions are not time-barred under § 315(b) based on a complaint served on a real party in interest more than a year earlier.” *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1242 (Fed. Cir. 2018). Although *Worlds* addressed the burden issue in the context of a real party in interest analysis, the same logic requires placing the burden on IPR petitioners to demonstrate that its petitions are not time-barred under § 315(b) based on a

⁶ References in this Order to “the IPRs” designate, collectively, the present *inter partes* review, IPR2017-00651, and the related *inter partes* review, IPR2017-00789.

complaint served on a privy more than a year before a petition is filed. *See id.* (relying on APA provision placing burden of persuasion on party seeking relief, here an order from the Board). Ventex, therefore, bears the burden of establishing that no real parties in interest or privies were served with a complaint alleging infringement more than one year prior to the filing of Ventex's petition on January 11, 2017. Paper 1.

Columbia alleges that Seirus is both a real party in interest and a privy of Ventex. PO Resp. 51–59; Papers 99, 100.⁷ Columbia filed an amended complaint alleging infringement of the '119 and '270 patents on April 2, 2014, Ex. 2127, and Seirus waived service of the summons the next day, Ex. 3001, which occurred more than one year prior to the filing of the petition in this case on January 11, 2017. PO Resp. 51. If Seirus is a real party in interest *or* a privy of Ventex, the petition is time-barred pursuant to § 315(b). Nevertheless, because the real party in interest and privity inquiries are separate from one another, and for the sake of completeness, we address both issues below.

⁷ Patent Owner did not raise the real party in interest argument in the Patent Owner Response, but did raise the issue in additional briefing after the good cause extension was granted. *See* PO Resp. 51–59; Papers 99, 100. Petitioner had an opportunity to brief the real party in interest issue as well. *See* Papers 103, 104, 118, 119. We exercise our discretion and consider Patent Owner's real party in interest argument rather than find waiver based on an initial failure to raise the issue. *See* 37 C.F.R. § 42.5(b) (stating that we may waive a requirement in our rules, which would include our requirement in our scheduling order that Patent Owner waives arguments not raised in the Patent Owner Response).

A. Real Party In Interest

The Office has recognized that whether a non-party must be identified in a proceeding as a real party in interest or a privy is a “highly fact-dependent question,” and that “[s]uch questions will be handled by the Office on a case-by-case basis taking into consideration how courts have viewed [those] terms.” Trial Practice Guide, 77 Fed. Reg. 48756, 48759 (Aug. 14, 2012). As noted in *AIT*, however, there have been few opportunities for the United States Court of Appeals for the Federal Circuit (“Federal Circuit” or “Court”) to address the issue of real party in interest in the context of an *inter partes* review proceeding. *AIT*, 897 F.3d at 1344. The Federal Circuit has now availed itself of such opportunity in *AIT* and has provided more concrete guidance in connection with the real party in interest inquiry in *inter partes* reviews.

As articulated by the Federal Circuit, “[d]etermining whether a non-party is a ‘real party in interest’ 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.* at 1351. The Court also provided some context for that assessment, noting that “the terms ‘real party in interest’ and ‘privy’ were included in § 315 to serve two related purposes: (1) to ensure that third parties who have sufficiently close relationships with IPR petitioners would be bound by the outcome of instituted IPRs under § 315(e), the related IPR estoppel provision; and (2) to safeguard patent owners from having to defend their patents against belated administrative attacks by related parties via § 315(b).” *Id.* at 1350. The particular facts of *AIT* also saw the Court further place distinct emphasis on

the circumstances surrounding a “client’s interests” when a party elects to file an IPR petition. *Id.* at 1352.

In this case, the record indicates that Ventex and Seirus have done business together since at least 2013. *See, e.g.*, Papers 103, 104 at 2. The parties’ relationship was governed by a “Supplier Agreement,” which required Ventex to “indemnify, defend and hold harmless Seirus . . . from and against any and all claims, demand, damages, liabilities, losses, costs and expenses, (including without limitation, attorney’s fees and costs), of any nature whatsoever, which arise from [Ventex’s] failure to perform its obligations.” Ex. 2009, 3. Columbia contends that the Supplier Agreement at least provided Ventex with the opportunity to control the Seirus litigation. PO Resp. 53–56.

Ventex and Seirus also entered into another contract in 2016, termed an “Exclusive Manufacturing Arrangement.” *See* Ex. 2189.⁸ The terms of that Agreement dictate “exclusivity” and require, in part, that Ventex “agrees to only manufacture Heatwave Material for Seirus” in exchange for Seirus’s payment of “an exclusivity fee.” *See id.* at 1–2. Columbia has accused Seirus of infringing the ’119 and ’270 patents because Seirus’s products incorporated the Heatwave fabric made by Ventex. Ex. 2127 ¶ 18.

⁸ Neither party contends that the Exclusive Manufacturing Agreement supersedes the portion of the Supplier Agreement requiring Ventex to indemnify and defend Seirus according to the terms of the Supplier Agreement. [REDACTED]

Ventex seems to acknowledge that the Supplier Agreement is in fact a portion of the Seirus “vendor manuals” that the 2016 Exclusive Manufacturing Agreement did not supersede. *See* Papers 103, 104 at 13.

In our view, these circumstances readily reveal that the parties had mutual interest in the continuing commercial and financial success of each other. In addition, the subject of the two contracts between the parties—material that is the subject of infringement allegations tied to the ’119 and ’270 patents—incentivizes both parties to invalidate claims of the ’119 and ’270 patents. In that sense, Seirus is a clear beneficiary of Ventex’s efforts in this *inter partes* review, and it follows readily that Ventex represents Seirus’s interests in this proceeding. Importantly, Ventex seeks relief in this forum that Seirus is barred under § 315(b) from seeking for itself. As in *AIT*, the evidence suggests that Ventex filed this action, in part, to benefit Seirus. *See AIT*, 897 F.3d at 1353.

Further evidence supports this conclusion. Ventex acknowledges that it “learned that Columbia had been threatening its customers with lawsuits alleging infringement of the ’119 and ’270 patents.” Papers 103, 104 at 4. Ventex also acknowledges that the “reasons for filing” these IPRs include that “its customers were threatened by Columbia’s patent assertion.” Papers 118, 119 at 3. In this proceeding, Ventex has relied, for various reasons, on the Declaration testimony of Mr. Paul Park. Mr. Paul Park identifies himself as the “Sales Director” of Ventex (*see, e.g.*, Ex. 1099 ¶ 1) with knowledge of corporate decisions made by Ventex (*id.* ¶ 2). Mr. Park testifies that Ventex sought to invalidate the ’119 patent and the ’270 patent to aid “prospective buyers” of its products. Ex. 2188, 96:8–14; *see also* Papers 103, 104 at 4 (citing to Mr. Park’s testimony). Ventex, thus, admits that the underlying rationale for the filing of the Petition was grounded in concern of potential legal jeopardy for “its customers” and “prospective buyers.” When Ventex filed the Petition, Seirus had been sued for infringing the ’119 and

'270 patents, the very situation about which Ventex expressed concern. Seirus never sought *inter partes* review during the one-year time frame set forth in 35 U.S.C. § 315(b). The exclusive business relationship between Ventex and Seirus relating to the accused Heatwave fabric, and Ventex's express desire to shield its customers and potential buyers from infringement lawsuits by Columbia strongly suggest that Ventex filed the Petition, at least in part, on Seirus's behalf.

Ventex argues that, because its IPR pertinent filings do not “cover all of the claims asserted by Columbia against Seirus in the Seirus Litigation,” Ventex was not representing Seirus's interests when it filed the Petition. Papers 103, 104 at 8–9; Papers 132, 133 at 1. We, however, find that argument unpersuasive. The totality of the circumstances here calls into considerable question Ventex's premise that Seirus is an entity divorced from this proceeding. Indeed, it is abundantly clear that Seirus had considerable interest in Ventex's pursuit of an invalidity determination for claims of both the '119 and '270 patents. That is logically so even if without perfect overlap between claims involved in the Seirus Litigation and claims involved in the IPRs. There cannot be any credible assertion that a determination of invalidity as to claims of the patents would not inure to the benefit of Seirus in the Seirus Litigation. Moreover, Ventex's repeated argument that Ventex had its own reasons for filing this action, including increasing sales to various customers, misses the point. *See* Papers 103, 104 at 4, 7–8. That Ventex had interest in invalidating claims in the '119 and '270 patents does not address whether Seirus is a real party in interest—“it is not an either-or proposition.” *See AIT*, 897 F.3d at 1353. “The point is not to probe [Ventex's] interest (it does not need any); rather, it is to probe the

extent to which [Seirus]—as [Ventex’s] client— has an interest in and will benefit from [Ventex’s] actions, and inquire whether [Ventex] can be said to be representing that interest.” *Id.* Based on our review of the contractual relationship between the parties and the record as a whole, we conclude that Seirus will benefit from Ventex’s actions and Ventex represents Seirus’s interests in this action.

As noted above, the Court in *AIT* invites a “flexible approach” in the real party in interest query that focuses on whether a “non-party is a clear beneficiary that has a preexisting, established relationship with the petitioner.” To be sure, we are mindful that we must be cautious not to “overextend[]” the reasoning set forth in *AIT* to any situation where “a party benefits generally from the filing of the Petition and also has a relationship with the Petitioner.” *See Unified Patents, Inc. v. Realtime Adaptive Streaming, LLC*, IPR2018-00883, Paper 36 at 14–15 (PTAB Oct. 11, 2018). In this case, however, Seirus would not receive a merely generalized benefit from Ventex’s filing of the Petition, but rather, the direct benefit of a finding of unpatentability of claims of the ’119 and ’270 patents for which Columbia had accused Seirus of infringing. Furthermore, it is clear that Ventex and Seirus had a specially structured, preexisting, and well established business relationship with one another, including indemnification and exclusivity arrangements. In our view, those circumstances are the type that, when adhering to the guidance articulated in *AIT*, give rise to a determination that Seirus should have been named a real party in interest.⁹

⁹ Consideration of the factors addressed in *Taylor v. Sturgell*, 553 U.S. 880 (2008), discussed in the privity analysis below, provide further support for

Based on the record before us, we determine Seirus is a real party in interest. We further determine that Seirus was served with a complaint alleging infringement of the '119 patent more than one year before the Petition was filed. Therefore, the Petition is time barred under 35 U.S.C. § 315(b).¹⁰

B. Privity

As a common law concept, privity under § 315(b) should be examined under the backdrop of the “cardinal rule of statutory construction that where Congress adopts a common-law term without supplying a definition, courts presume that Congress knows and adopts the cluster of ideas that were attached to the term.” *WesternGeco LLC v. ION Geophysical Corp.*, 889 F.3d 1308, 1317 (Fed. Cir. 2018) (quoting *FAA v. Cooper*, 566 U.S. 284, 291–92 (2012)) (quotation marks omitted). Privity “prevent[s] successive challenges to a patent by those who previously have had the opportunity to

our conclusion that Seirus is a real party in interest. Those factors apply to real party in interest as well as privity inquiries. *See AIT*, 897 F.3d at 1360 (Reyna, J., concurring) (“The Supreme Court did not limit the application of the framework to either real party in interest or privity; it equally applies to both.” (citing *Taylor*, 553 U.S. at 894 n.8)).

¹⁰ Columbia contends that Seirus’s status as a real party in interest is further evident because, according to Columbia, the parties engaged in settlement discussions and because “Ventex conditioned its settlement proposal upon columbia’s abandonment of Columbia’s infringement suit against Seirus.” Papers 99, 100 at 3. Ventex contends that the settlement communications in question are inadmissible under Federal Rule of Evidence (“FRE”) 408. Papers 118, 119 at 2. It is not apparent that FRE 408 is applicable in this situation as that rule excludes evidence related to “a disputed claim” and the central claim in an IPR concerns patentability, not a threshold real party in interest inquiry. Nevertheless, our conclusions set forth in this Order did not rely on any content of any settlement discussions between the parties.

make such challenges in prior litigation.” *Id.* at 1319. In *Taylor v. Sturgell*, 553 U.S. 880, 894–95 (2008), the Supreme Court provided a non-exhaustive list for examining whether the legal relationship between two parties establishes that one is the privy of the other: “(1) an agreement between the parties to be bound; (2) pre-existing substantive legal relationships between the parties; (3) adequate representation by the named party; (4) the non-party’s control of the prior litigation; (5) where the non-party acts as a proxy for the named party to relitigate the same issues; and (6) where special statutory schemes foreclose successive litigation by the non-party (e.g., bankruptcy and probate).” *AIT*, 897 F.3d at 1360 (Reyna, J., concurring) (citing *Taylor*, 553 U.S. at 894–95).

Analysis under any one of the factors can support a finding of privity. *See id.* (describing “six categories that create independent exceptions” to the normal rule forbidding non-party preclusion); *id.* at 1363 (emphasizing that any one of the factors can independently establish privity). Here, at least factors 2 and 5 support our conclusion that Seirus and Ventex are privies.

As discussed above, the parties had a preexisting substantive legal relationship in the form of two contracts, a Supplier Agreement with an obligation to indemnify and defend, and an Exclusive Manufacturing Agreement. *See Exs. 2009, 2189*. Further, these agreements directly related to the product accused of infringing the patent at issue in this proceeding because they governed the contracts between the parties that resulted in Ventex’s sale of fabric to Seirus. *See id.*; Ex. 2127 ¶ 18. Finding Seirus and Ventex in privity with one another comports with the goal of “tak[ing] into account the ‘practical situation’, and [extending privity] to parties, to

transactions, and other activities *relating to the property in question.*” Trial Practice Guide, 77 Fed. Reg. at 48,759 (citations omitted) (emphasis added).

Evidence also supports a conclusion that Ventex is serving as a proxy for Seirus and that Seirus was, in effect, funding the *inter partes* reviews, whether wittingly or unwittingly. In making out its privity case, Columbia directs our attention to payments made from Seirus to Ventex from late 2016 to 2018 pursuant to the Exclusive Manufacturing Agreement. *See, e.g.*, Papers 99, 100 at 6–10. Columbia contends that those identified payments indicate that Seirus was funding the IPRs. Ventex, on the other hand, contends that the payments are normal business transactions between Ventex and Seirus and unrelated to the IPRs. *See, e.g.*, Papers 118, 119 at 3–5. The timing, structure, and amounts of the payments suggest a correlation with legal fees incurred by Ventex in connection with the preparation and prosecution of these IPRs by its counsel. For example, a few months prior to the filing of the Petition, the parties entered into their Exclusive Manufacturing Agreement, which included a \$█,000 advance, \$█,000 in surcharges, and ongoing fees above the usual amount Seirus paid for Ventex’s materials. *See* Ex. 2189, 1–2; Papers 99, 100 at 6–7. The result was \$█,000 in payments, with a \$█,000 advance coinciding with the first payments to counsel for Ventex for work on the *inter partes* reviews. Papers 99, 100 at 8. An internal Ventex email further links the surcharge fees from Seirus as necessary to cover the attorneys’ fees in these *inter partes* reviews. *Id.* at 8–9; Ex. 2200 ¶¶ 44–46; Ex. 1095.

Other evidence suggests that the Exclusive Manufacturing Agreement may have been a cover for Seirus to fund the *inter partes* reviews without leaving a paper trail establishing Ventex’s awareness that, because Seirus

was a real party in interest, a petition for *inter partes* review would be barred under § 315(b). For example, Seirus was allegedly paying a large sum of money compared to its usual cost of obtaining goods (\$█,000) for “exclusivity,” yet the 2013 Supplier Agreement already prevented Ventex from selling to Seirus competitors. Papers 99, 100 at 9–10; Papers 103, 104 at 10 (Ventex acknowledging that the “original exclusivity agreement dates back to 2013”). Ventex broadly asserts that the new exclusivity agreement was perceived to have value to Seirus, but that merely begs the question and does not explain adequately *why* Seirus would pay such a large sum for rights it appeared to already possess. *See* Papers 103, 104 at 3, 10–11; Papers 118, 119 at 4 (asserting that Seirus wanted to “maintain” exclusivity without explaining why the prior exclusivity was lost or inadequate, or how the scope of exclusivity changed).

Columbia sought discovery from Ventex and Seirus regarding the nature of their agreements and related issues, but Ventex and Seirus produced witnesses largely unable to answer key open questions, either due to lack of firsthand knowledge or lack of preparation due to a failure to discuss the issues with those having firsthand knowledge. *See* Papers 115, 116 at 1–3. We do not go so far as to apply an adverse inference due to this or other alleged discovery misconduct. The lack of evidence, however, regarding the issues that might explain why Seirus paid for the revised exclusivity on the eve of filing the Petitions in these cases cuts against the party bearing the burden of proof on these issues, Ventex. Even if we do not reach the issue of whether the Exclusive Manufacturing Agreement was a sham meant to cover payments from Seirus to Ventex to fund this *inter partes* review, at a minimum the record shows an inextricable link between

the two. *See* Ex. 2200 ¶¶ 44–46; Ex. 1095. The evidence suggests that without the advance payment and surcharges, Ventex may not have been able to fund this *inter partes* review. *See id.* Moreover, the record suggests that their interests were aligned and that invalidation of the claims subject to this *inter partes* review would directly benefit Seirus. *See AIT*, 897 F.3d at 1363–64 (Reyna, J., concurring) (noting alignment of interests and lack of conflict as “indicators of privity”).

Based on the foregoing, we conclude that the preexisting contractual relationships between Seirus and Ventex, and Ventex’s role as a proxy for Seirus in these *inter partes* reviews, supports the conclusion that Seirus is in privity with Ventex. Accordingly, Ventex has not met its burden to establish that Seirus is not a privy and that the Petition is not time-barred pursuant to § 315(b).

C. Motion to Exclude

Columbia filed a Motion to Exclude certain content of the record. *See* Paper 51 (“Mot to. Excl.”). In particular, Columbia expresses the following:

Pursuant to 37 C.F.R. § 42.64, Patent Owner Columbia Sportswear North America, Inc. (“Columbia”) hereby moves to exclude inadmissible Exhibits 1061, 1062, 1073-1079, 1080, and paragraphs 9–11 of Exhibit 1083 submitted with Petitioner Ventex Co., Ltd.’s Reply (Paper 45), and the corresponding portions of the Reply. Alternatively, Columbia moves that the Reply be stricken in its entirety. Ventex uses these exhibits to improperly assert new grounds for unpatentability in its Reply in violation of 37 C.F.R. § 42.23, and the Board’s Institution Decision limiting the grounds for trial.

Mot. to Excl. 1. Thus, the underlying basis for Columbia’s Motion to Exclude is that the noted Exhibits and content of Ventex’s Reply allegedly are directed to new grounds of unpatentability. The content of the record

identified by Columbia in its Motion to Exclude did not factor into this Order, and was not considered in connection with any “new grounds of unpatentability.” Accordingly, we regard Columbia’s motion as moot and dismiss it on that basis.

III. CONCLUSION

For the foregoing reasons, we conclude on this record that Seirus is a real party in interest and Ventex and Seirus are privies. Furthermore, we determine that Seirus was served with a complaint alleging infringement of the ’119 patent more than one year before the Petition was filed. Therefore, based on the circumstances of this case, the Petition is barred under 35 U.S.C. § 315(b). Accordingly, pursuant to 35 U.S.C. § 315(b), and 37 C.F.R. §§ 42.71(a) and 42.72, we dismiss the Petition, vacate our Decision to Institute (Paper 17), and terminate the *inter partes* review without rendering a final written decision under 35 U.S.C. § 318(a).

IV. ORDER

It is
ORDERED that the Petition is *dismissed*;
FURTHER ORDERED that the Decision to Institute (Paper 17) is *vacated*;
FURTHER ORDERED that *inter partes* review is *terminated*; and
FURTHER ORDERED that Columbia’s Motion to Exclude Evidence (Paper 51) is *dismissed as moot*.

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