

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

VIRNETX INC.,
Patent Owner.

Case IPR2014-00401 and IPR2014-00405
Patent 7,188,180 B2
Case IPR2014-00558¹
Patent 6,502,135 B2

Before MICHAEL P. TIERNEY, KARL D. EASTHOM, and STEPHEN C. SIU,
Administrative Patent Judges.

SIU, *Administrative Patent Judge.*

DECISION
Request for Rehearing
37 C.F.R. § 42.71(d)

¹ This decision addresses an issue that is identical in each case. We, therefore, exercise our discretion to issue one Decision to be filed in each case. Unless otherwise authorized, the parties, however, are not authorized to use this style heading for any subsequent papers. Citations and page references in the Decision correspond to IPR2014-00401, unless otherwise indicated.

I. BACKGROUND

Microsoft Corporation (“Petitioner”), in its Request for Rehearing (“Req.” or “Request”), seeks reversal of the Board’s Decision (“Decision”) not to institute an *inter partes* review of claims 1, 4, 6, 10, 12-15, 17, 20, 22, 26, 28-31, 35, and 37 of U.S. Patent 7,188,180 B2 (“the ’180 Patent,” Ex. 1001). *See* Req. Reh’g. 8. For the reasons that follow, the Board denies the requested relief.

The applicable standard for a request for rehearing is set forth in 37 C.F.R. § 42.71(d), which provides in relevant part:

A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, opposition, or a reply.

Petitioner disagrees with the Decision for denying institution of *inter partes* review pursuant to 35 U.S.C. § 315(b). 35 U.S.C. 315(b) provides in relevant part:

An *inter partes* review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner . . . is served with a complaint alleging infringement of the patent.

II. DISCUSSION

Petitioner argues that “a complaint,” as specified in 35 U.S.C. § 315(b), “creates an ambiguity,” that Petitioner previously “set forth an equally plausible interpretation” of “a complaint,” and that resolution of the alleged “ambiguity” should be resolved by “turn[ing] to the legislative history of § 315(b).” Req. Reh’g 3. As previously explained in the Decision, Petitioner does not demonstrate

persuasively a substantial “ambiguity” in the context of 35 U.S.C. § 315(b). The statute explicitly states that an *inter partes* review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner is served with a complaint. In the present case and as previously explained in the Decision, the Petitioner was served with a complaint more than one year prior to the date on which the present petition was filed. We declined to institute *inter partes* review pursuant to 35 U.S.C. § 315(b).

The Board employed standard tools of statutory construction in interpreting § 315(b), and did not overlook or misapprehend the need to interpret the statute properly. In interpreting 35 U.S.C. § 315(b), the Board concluded that the statute was not ambiguous as to whether “a complaint alleging infringement” that was served previously could preclude institution of an *inter partes* review. Additionally, while we disagree that the statute is ambiguous, to the extent there is an ambiguity, the Board’s interpretation of the statute is consistent with the legislative history, including that identified by Petitioner.

III. CONCLUSION

Based on the foregoing discussion, Petitioner’s Request is granted to the extent that the Board has reconsidered its Decision, but Petitioner’s requested relief for a reversal of the Decision is denied because Petitioner has not shown that the Decision overlooks or misapprehends a material point.

IV. ORDER

For the reasons given, it is

ORDERED that the Request for Rehearing is denied; and

IPR2014-00401, IPR2014-00405, IPR2014-00558
Patents 7,188,180 B2; 6,502,135 B2

FURTHER ORDERED that a copy of this Decision be entered into the file of each of Case IPR2014-00401, Case IPR2014-00405, and Case IPR2014-00558.

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