Comment of Dolby Laboratories, Inc. In Response to Notice of Proposed Rulemaking Concerning Changes To Rules of Practice for Ex Parte Reexamination

Dolby Laboratories, Inc. ("Dolby") respectfully submits this comment in response to the Office's notice of proposed rulemaking of July 22, 2026 ("NPRM"), titled "Requirement To Identify All Real Parties in Interest to a Third Party Request for an Ex Parte Reexamination."[1]

Dolby is a publicly traded American company headquartered in San Francisco with more than 1,000 employees in the United States and over 2,000 employees worldwide. Since its founding in 1965 by inventor Ray Dolby, Dolby has pioneered innovations in audio, image signal processing, and compression technologies, enabling more immersive experiences for cinema, television, mobile devices, streaming, and home entertainment. Dolby holds more than 3,500 United States patents, and relies upon intellectual property licensing to bring its technologies into consumer markets.

Dolby applauds the Office's efforts towards enforcement of the AIA's real party in interest disclosure requirements and estoppel provisions. And Dolby agrees with the NPRM that, to enforce the estoppel provisions of 35 U.S.C. § 315(e)(1), the Office must be able to identify all real parties in interest to a third party request for an ex parte reexamination. Dolby thus supports the proposed rule's requirement that third party reexamination requesters provide information disclosing their real parties in interest.

At the same time, the NPRM correctly recognizes that "the issue of whether a party is a real party in interest can be a disputed question." 91 FR 46040. As a result, simply requiring a third party reexamination requester to provide a good faith certification of the identities of its real parties in interest does not suffice to resolve the concerns underlying either § 315(e)(1) or the NPRM. Rather, as further detailed below, the Office should additionally require such requesters to answer specific factual questions that would allow the Office to make its own determinations.

The Office's experience with petitions filed by RPX Corp. and Unified Patents, LLC evidences the need to look beyond a requester/petitioner's certification as to its real parties in interest. In *RPX Corp. v. Applications in Internet Time, LLC*, IPR2015-01750, petitioner RPX had certified that it was the sole real party in interest to its petition. The Patent Trial and Appeal Board initially agreed. The Federal Circuit, however, reversed and vacated, faulting the PTAB's "decision to accept at face value RPX's explanation of its own interest in the IPRs." *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1354 (Fed. Cir. 2018). The Federal Circuit instead instructed that the Office look beyond a patent challenger's own assurances and give "the term 'real party in interest' [ ] its expansive common-law meaning," as "Congress intended." *Id.* at 1351. On remand, after weighing the facts in view of the Federal Circuit's instructions, the Office concluded that RPX was not in fact the sole real party in interest to its petition, that Salesforce was also a real party in interest, and that the petition was thus time-barred under 35 U.S.C. § 315(b). IPR2015-01750, Paper 128.

Likewise, in *Unified Patents, LLC v. MemoryWeb, LLC*, IPR2021-01413, Paper 56 (March 8, 2023), the PTAB found that Unified was *not* the sole real party in interest to its

[1] 91 FR 46038.

petition, and that two of its members—Samsung and Apple—were also real parties in interest. That finding came despite Unified's consistent certification in more than two hundred inter partes review petitions that it is the sole real party in interest to its patent challenges. Although the PTAB's determination was later vacated by then-Director Vidal on "efficiency" grounds, IPR2021-01413, Paper 76 (May 22, 2023), the vacatur did not contradict the Board's underlying factual finding that Unified's real parties in interest certification was inaccurate.[2]

Together, *RPX v. AIT* and *Unified v. MemoryWeb* demonstrate that the Office should not simply rely on a requester's certification for purposes of identifying the real parties in interest to a patent challenge, and that accepting such assurances at face value can indeed expose patent owners to the same abusive serial challenges that § 315(e) and the NPRM are intended to prevent.

Rather, in addition to a requester's certification, the Office should require that the requester identify factual information that the Office and the Federal Circuit have found to be critical to proper determination of the real parties in interest, i.e.:

1. Whether the filing entity is a for-profit organization that receives fees from members / subscribers for patent-related services, such as (without limitation) by providing market intelligence and data, securing patent rights (including patent licenses), providing technical and strategic analyses as to patent-related risks or threats, or filing patent challenges intended at least in part to reduce members' / subscribers' patent risks;
2. Whether the entity has directly or indirectly used funds provided by its members / subscribers, or any other entity or individual, to bring the patent challenge;
3. Whether the filing entity has any legitimate risk of infringement liability to itself with respect to the challenged patent, and if so, on what basis; and
4. The names of all members / subscribers responsive to questions 1 and 2 above.[3]

Requiring such factual information from requesters is particularly warranted in the context of third party reexamination requests since the patent owner typically does not know the identity of the requester or its potential real parties in interest. As a result, the patent owner is neither able to develop its own factual record nor challenge a requester's certification through evidence-backed adjudication. Applying an "expansive" definition of real parties in interest, as the Federal Circuit has required, thus falls entirely upon the Office, and warrants requiring more than a mere certification from requesters. Moreover, a patent owner faced with a third party reexamination request may have indeterminate estoppel rights arising from a previous inter partes review challenge to the same patent. *See, e.g.*, *Unified Patents, LLC v. Dolby Laboratories Licensing Corp.*, IPR2021-00275, Paper 48 (June 15,

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[2] Dolby recognizes and applauds Director Squires' actions toward enforcement of the AIA's real party in interest identification provisions, including de-designation of the *SharkNinja* precedent and various decisions that have robustly examined the identities of patent challengers' real parties in interest.

[3] *RPX v. AIT*, PR2015-01750, Paper 128 at 11-17, 20-23, 31 ("Most critically, Salesforce paid RPX to reduce Salesforce's patent litigation exposure, and RPX filed these IPRs despite having no apparent risk of infringement liability itself."); *Unified Patents v. MemoryWeb*, IPR2021-01413, Paper 56 at 14-15, 20-33.

2022) (refusing to determine whether certain entities were real parties in interest to Unified's petition). In such cases, the Office will need more information than a mere certification to determine whether the reexamination request is barred by § 315(e).