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Paper 34
Date: June 5, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

TIKTOK INC.,[1]
Petitioner,

v.

CELLSPIN SOFT, INC.,
Patent Owner.

IPR2024-00757 (Patent 8,756,336 B2)
IPR2024-00759 (Patent 8,862,757 B2)
IPR2024-00760 (Patent 8,898,260 B2)
IPR2024-00767 (Patent 11,659,381 B2)
IPR2024-00768 (Patent 11,234,121 B2)
IPR2024-00769 (Patent 9,900,766 B2)
IPR2024-00770 (Patent 8,904,030 B2)[2]

Before COKE MORGAN STEWART, *Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.*

ORDER
Initiating *Sua Sponte* Director Review

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[1] LifeScan, Inc., Senseonics Holdings, Inc., and Ascensia Diabetes Care Holdings AG have been joined as Petitioners to IPR2024-00768, IPR2024-00769, and IPR2024-00770.

[2] This Order applies to each of the above-listed cases.

On June 2, 2025, the Board issued an Order Denying Patent Owner's Motion to Terminate. Paper 33 ("Order").[3] Cellspin Soft, Inc. ("Patent Owner") requested that the Board terminate the *inter partes* reviews ("IPRs") and vacate its decisions on institution for two reasons: (1) Petitioner TikTok, Inc. ("Petitioner") failed to name the Chinese Communist Party ("CCP") as a real party-in-interest ("RPI") as required under 35 U.S.C. § 312(a); and (2) Petitioner is an entity controlled by a sovereign and, therefore, is not a "person" eligible to file IPRs under the Supreme Court's ruling in *Return Mail, Inc. v. United States Postal Service*, 587 U.S. 618 (2019). Order 2.

In denying Patent Owner's motion, the Board determined that Patent Owner waived its right to raise the RPI issue as a basis to terminate the IPRs. *Id.* at 8. Nevertheless, the Board addressed some of Patent Owner's substantive arguments.

As to Patent Owner's argument that Petitioner failed to name the CCP as an RPI, the Board found that even if the CCP was an unnamed RPI, Patent Owner did not show that Petitioner's failure to name the CCP in the petitions requires termination because the Board's "jurisdiction to consider a petition does not require a 'correct' identification of all RPIs in a petition" and because it is not necessary for the Board to consider whether an

[3] All citations are to IPR2024-00757. Similar papers and exhibits were filed in all cases.

unnamed party is an RPI when adding that party "would not create a time bar or estoppel under 35 U.S.C. § 315." Order 9 (quoting *SharkNinja Operating LLC v. iRobot Corp.*, IPR2020-00734, Paper 11, 18 (PTAB Oct. 6, 2020) (precedential) (additional citation omitted)).

As to Patent Owner's *Return Mail* argument, the Board was not persuaded that the decision applies to these IPRs, because *Return Mail* addressed whether a federal agency is a "person" able to petition for post-grant reviews and the alleged sovereign in these IPRs—the CCP—is a foreign country not a U.S. federal agency. Order 11–12. The Board also declined to extend *Return Mail* to these IPRs. *Id.* at 12–14.

I have reviewed the Board's Order and the relevant papers. I determine that *sua sponte* Director Review is appropriate to reconsider the Board's decisions to institute in view of the novel issues presented in these IPRs. 37 C.F.R. § 42.75(b); *United States v. Arthrex, Inc.*, 594 U.S. 1 (2021). The cases shall be stayed until further notice and an opinion will issue in due course.

Accordingly, based on the foregoing, it is

ORDERED that a *sua sponte* Director review to reconsider the Board's decisions to institute is initiated;

FURTHER ORDERED that these IPRs are stayed until further notice; and

FURTHER ORDERED that an opinion will issue in due course.

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IPR2024-00770 (Patent 8,904,030 B2)

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