Director PTABDecision Review@uspto.gov
571.272.7822

Paper 42
Date: March 30, 2026

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 JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

DECISION
Vacating the Decisions Granting Institution and
Denying Institution of *Inter Partes* Review

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

[2] This Decision applies to each of the above-listed cases. All citations are to IPR2024-00757. The parties filed similar papers and exhibits in all cases.

I. BACKGROUND

Cellspin Soft, Inc. ("Patent Owner") requested termination of the instant *inter partes* reviews ("IPR") and vacatur of the Board's institution decisions, arguing that: (1) Petitioner TikTok, Inc. ("Petitioner" or "TikTok") is controlled by a foreign government that is ineligible to file an IPR under the U.S. Supreme Court's ruling in *Return Mail, Inc. v. United States Postal Service*, 587 U.S. 618 (2019); and (2) the Petitions failed to identify all real parties in interest ("RPIs") as required under 35 U.S.C. § 312(a)(2). Paper 22, 1.

On June 2, 2025, the Board issued an Order Denying Patent Owner's Motion to Terminate each of the above-captioned IPRs. *See* Paper 33 ("Order"). The Board denied the motion after determining that *Return Mail* applied to U.S. federal agencies, not foreign governments, and thus declined to extend *Return Mail* to a foreign government. Order 11–14. The Board also declined to resolve the RPI dispute in view of the now de-designated precedential decision, *SharkNinja Operating LLC v. iRobot Corp.*, IPR2020-00734, Paper 11 (PTAB Oct. 6, 2020) (de-designated Sept. 26, 2025), because adding the foreign government as an RPI "would not create a time bar or estoppel under 35 U.S.C. § 315." *Id.* at 9 (quoting *SharkNinja*, Paper 11 at 18).

On June 5, 2025, *sua sponte* Director Review was initiated in each of these IPRs to reconsider the Board's decisions to institute in view of the novel issues presented in the IPRs. *See* Paper 34. I subsequently issued an

Order authorizing additional briefing as a result of the newly issued informative decision in *Yangtze Memory Technologies Company, Ltd. v. Micron Technology, Inc.*, IPR2025-00098, -00099, Paper 38 (Director Jan. 15, 2026) (informative) ("*YMTC*") as well as Petitioner's recent announcement of a newly implemented Joint Venture Ownership structure for TikTok as entity, namely TikTok USDS Joint Venture LLC ("Joint Venture"). Paper 38. In that regard, I authorized additional briefing to address whether Patent Owner had sufficiently put Petitioner's RPI identification into dispute and what affect, if any, the recently announced Joint Venture may have on the proceedings.

Thereafter, on March 18, 2026, I issued a precedential decision in *Tianma Microelectronics Co., Ltd. v. LG Display Co., Ltd.*, IPR2025-01579, Paper 12 ("*Tianma*") holding that a proper application of the U.S. Supreme Court's precedent in *Return Mail* dictates that a foreign government cannot be considered a "person" under the AIA and, therefore, is not permitted to seek review of a patent before the Office as a petitioner in AIA proceedings. *Tianma*, Paper 12 at 4.

Accordingly, in light of *Tianma*, the only remaining issues to be decided here are whether TikTok identified all RPIs in its Petitions and

whether any such RPIs is a foreign government whose participation is prohibited.[3]

After reviewing the parties' supplemental briefs (Papers 39, 40), the parties' briefs on Patent Owner's Motion to Terminate (Papers 22, 25), and the Board's Order, I vacate the decisions granting institution of *inter partes* review, and deny the Petitions.

II. ANALYSIS

Having established in *Tianma* that governments—whether foreign or domestic—may not properly be petitioners or RPIs, the factual questions remaining here are whether: (1) *at the time the petitions were filed*, a foreign government constituted a Petitioner's RPI (and, therefore, the petitions are thus barred); or (2) whether Patent Owner at least put the RPI question into dispute (and, if so, whether Petitioner sufficiently rebutted that argument by showing that the foreign government was not an RPI). Paper 22, 2–7.[4]

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[3] Although the Board addressed the issues, it also found that Patent Owner forfeited its arguments by failing to raise them in its Patent Owner Response. Order 7–8. Because the issues Patent Owner raised are novel—indeed, they were the basis for initiating Director Review—it is in the interests of justice to address them on the merits. *See* 37 C.F.R. § 42.5(c)(3).

[4] Petitioner's views on the effect of the announced ownership changes related to TikTok are noted, Paper 39, 5, but the RPI and the foreign sovereign bar, where applicable, *are evaluated as of the filing date of the petition* (and whether any subsequent amendments to RPIs would result in the petition being time barred). As such, although the ownership change to a new joint venture construct announced on January 22, 2026 may entitle the

Under Office precedent, petitioners have an obligation to identify all RPIs in their petitions. *Corning Optical Commc'ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015) (precedential, except § II.E.1) ("*Corning Optical*"). In these IPRs, Patent Owner argued that a foreign government was an RPI and supported its argument with ample evidence, including articles and reports, a Department of Homeland Security Data Security Business Advisory, and U.S. Court decisions. Paper 22, 2–7; Exs. 2025, 2026. This evidence was sufficient to put into dispute whether the Petitions identified all RPIs and whether there is an RPI who is not a "person" eligible to file an IPR. *See Tianma*, Paper 12 at 8–9. Although evidence of percentage ownership (whether greater or less than 10%) is not necessarily dispositive of the broader RPI inquiry including notions of control, Patent Owner did not rely *solely* on such evidence here.

As I held in *Tianma*, "[w]ith its identification of RPIs in dispute, it was Petitioner's burden to bring forth evidence or arguments demonstrating that it had named *all* RPIs—and that none were foreign governments or entities a foreign government had the ability to control." *Tianma*, Paper 12 at 9–10 (emphasis added, citing *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1242 (Fed. Cir. 2018)). In the instant case, the Board authorized Petitioner

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Joint Venture to file an IPR petition as a person in the future in light of the *Corning Optical* precedent (and I make no finding as to that here), it has no legal effect on the foreign sovereign bar that applied as of the Petition filing dates in the instant cases.

to introduce "rebuttal evidence" in response to Patent Owner's evidence; however, Petitioner elected not to introduce any. Paper 19, 6.

As a result, on this record, Petitioner failed to carry its burden to establish that a foreign government was *not* an RPI at the time of its petition. Accordingly, under *Tianma*, Petitioner is deemed ineligible to file an IPR and, therefore, the decisions granting institution are hereby vacated, the Petitions are denied, and these IPRs are terminated.[5] Because the decisions granting institution are terminated, I also vacate the Board's orders joining LifeScan, Senseonics, and Ascensia, who filed Petitions in IPR2025-00102, IPR2025-00103, and IPR2025-00104, as petitioners to IPR2024-00768,

[5] Patent Owner asserted the challenged patents against TikTok on October 20, 2023, meaning that, as of October 20, 2024, TikTok was resultantly time-barred under 35 U.S.C. § 315(b). TikTok filed its Petitions between April 1, 2024 and April 5, 2024. *See e.g.*, Paper 1; IPR2024-00768, Paper 1. In due course of these proceedings, on February 2, 2026, TikTok filed updated mandatory notices identifying the Joint Venture as an RPI in these cases, Paper 41, but these updated notices are barred from relating back to the original date of the Petitions under the former ownership structure. I note that while the newly constituted Joint Venture may give rise to an argument that TikTok can be considered a "person" under *Return Mail* in future cases, *see supra* n.4, as explained, it has no effect on the instant cases. That is, even assuming TikTok's updated mandatory notices would satisfy the statutory requirement of identifying all RPIs (and that none would be a foreign government), according the Petitions a filing date of February 2, 2026, would mean they were time-barred under 35 U.S.C. § 315(b), and as such, would still require termination of these proceedings. *See Corning Optical*, Paper 68 at 25; *YMTC*, Paper 38 at 8.

IPR2024-00769, and IPR2024-00770. The Board shall determine whether the Petitions in IPR2025-00102, IPR2025-00103, and IPR2025-00104 should be instituted on their own.

Based on the foregoing, it is:

ORDERED that the Board's decisions granting institution of *inter partes* review in the above-captioned proceedings are vacated;

FURTHER ORDERED that the Petitions are denied, and no trials are instituted;

FURTHER ORDERED that the Board's orders joining LifeScan, Senseonics, and Ascensia as petitioners to IPR2024-00768, IPR2024-00769, and IPR2024-00770 are vacated; and

FURTHER ORDERED that the Board shall determine whether the Petitions in IPR2025-00102, IPR2025-00103, and IPR2025-00104 should be instituted on their own.

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For PETITIONER:

W. Karl Renner
Kim H. Leung
Baile Xie
Ricardo J. Bonilla
Steven Katz
Rishi Gupta
Ryan O'Connor
FISH & RICHARDSON P.C.
axf-ptab@fr.com
leung@fr.com
xie@fr.com
rbonilla@fr.com
katz@fr.com
rgupta@fr.com
oconnor@fr.com

For JOINED PETITIONER IN IPR2025-00102, -00103, and -00104:

Charles M. McMahon
Thomas M. DaMario
BENESCH FRIEDLANDER COPLAN & ARONOFF LLP
cmcmahon@beneschlaw.com
tdamario@beneschlaw.com

Joseph A. Hynds
Michael Battaglia
ROTHWELL, FIGG, ERNST & MANBECK, P.C.
jhynds@rfem.com
mbattaglia@rfem.com

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For PATENT OWNER:

René A. Vazquez
SINERGIA TECH. LAW GROUP, PLLC
rvazquez@sinergialaw.com

M. Scott Fuller
GARTEISER HONEA PLLC
sfuller@ghiplaw.com