

App. No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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Dragon Intellectual Property, L.L.C.,  
Petitioner

v.

DISH Network LLC, Sirius XM Radio Inc.,  
Respondents

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ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A  
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

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PETITIONER'S APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A  
WRIT OF CERTIORARI

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Kai Zhu  
Dragon Intellectual Property  
c/o  
60 Cody Ln  
Los Altos, CA 94022  
(650) 996-8608  
kz@dragonipllc.com

January 19, 2018

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To the Honorable John G. Roberts, Jr., as Circuit Justice for the United States Court of Appeals for the Federal Circuit:

Pursuant to Supreme Court Rule 13.5, petitioner Dragon Intellectual Property, LLC respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended for sixty days to and including April 2, 2018. On November 1, 2017, the Court of Appeals issued its judgment and opinion (see App. A, *infra*). Absent an extension of time, the Petition would therefore be due on January 30, 2018. Petitioner is filing this Application at least ten days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

## **BACKGROUND**

The instant cases on appeal in the Court of Appeals for the Federal Circuit originated from *inter partes* review (IPR) proceedings before the Patent Trial and Appeal Board (PTAB) at the Patent and Trademark Office (PTO). The PTAB found multiple claims of U.S. Patent No. 5,930,444 (“the ’444 patent”) obvious under 35 U.S.C. § 103 (pre-AIA).

An IPR proceeding, which is an adversarial process used by the PTO to analyze the validity of existing patents, violates the Constitution by extinguishing private property rights through a non-Article III forum without a jury.

Further, the Federal Circuit committed an error when it found substantial evidence and upheld the PTAB’s obviousness finding for the ’444 patent but completely ignored the findings of the PTO from an earlier supplemental examination of the same patent with the same/similar prior art. In early 2013, petitioner filed a supplemental examination of the ’444 patent. A full panel of three PTO examiners found the claims in question valid and reached conclusions that would be opposite to the later findings of the PTAB. But neither the PTAB nor the Federal Circuit gave any evidentiary weight to those findings in the supplemental examination by another panel of the same Patent Office.

Because these issues are complex, and because petitioner is a very small company with limited resources, petitioner has encountered great difficulties in retaining a capable Supreme Court counsel to represent it and file a Certiorari Petition. While petitioner continues to work hard on finding a counsel, the current deadline for the Petition is approaching.

## **REASONS FOR GRANTING AN EXTENSION OF TIME**

With limited resources, petitioner is still working hard to retain a counsel for its Certiorari Petition. It is a difficult process, and preparing a Certiorari Petition is no easy job, so petitioner needs more time.

The constitutionality of an IPR proceeding is a threshold question. Exactly the same issue was recently raised in another case currently pending before this Court, *Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC*, for which the Court held an oral hearing on November 27, 2017. The Court is expected to issue an opinion soon for the *Oil States* case and answer the same constitutionality question now also faced by petitioner in this matter. As such, petitioner should also be afforded more time so that it can wait for the upcoming *Oil States* opinion and avoid wasting resources to file a moot Petition.

The instant cases also present an important issue warranting a carefully prepared Petition. The supplemental examination procedure was created by Congress in the same America Invents Act (2011) as the IPR proceeding was created. Congress anticipated that a supplemental examination would give a patent owner peace of mind regarding the validity of its property rights. Indeed, petitioner started enforcing the '444 patent in December, 2013, several months after it had received a supplemental examination certificate for the '444 patent from the PTO. But later, when this patent was challenged under the same/similar prior art before the PTAB, the Federal Circuit gave no evidentiary weight whatsoever to the supplemental examination, as if it had never happened.

Congress would not expect such a result. This issue is of the first impression and is complex, and petitioner needs additional time to prepare a well-researched Petition.

### **CONCLUSION**

For the foregoing reasons, petitioner respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended sixty days to and including April 2, 2018.

Respectfully submitted,



Kai Zhu  
General Counsel  
Dragon Intellectual Property, LLC  
c/o  
60 Cody Ln  
Los Altos, CA 94022  
(650) 996-8608  
kz@dragonipllc.com

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