

IN THE SUPREME COURT OF THE UNITED STATES

No. 18-916

THRYV, INC., FKA DEX MEDIA, INC., PETITIONER

v.

CLICK-TO-CALL TECHNOLOGIES, LP, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

MOTION OF THE FEDERAL RESPONDENT FOR DIVIDED ARGUMENT

Pursuant to Rule 28.4 of the Rules of this Court, the Solicitor General, on behalf of the federal respondent, respectfully moves for divided argument in this case. The federal respondent has filed a brief supporting reversal and suggests the following division of argument time: 15 minutes for petitioner, 15 minutes for the federal respondent, and 30 minutes for the private respondents. Counsel for petitioner has agreed to that division of argument time.

This case presents the question whether, in an appeal from the final written decision of the Patent Trial and Appeal Board (Board) in an inter partes review, the Federal Circuit is

authorized to vacate the Board's decision as to patentability on the ground that the review was improperly instituted because the petition was time-barred by 35 U.S.C. 315(b). The Board is part of the United States Patent and Trademark Office (USPTO). 35 U.S.C. 6.

In this case, the Board instituted an inter partes review of a patent owned by private respondent Click-to-Call Technologies, LP, pursuant to an inter partes review petition filed by petitioner Thryv, Inc. (formerly known as Dex Media, Inc.). The Board subsequently issued a final written decision, finding several claims in the challenged patent to be unpatentable. Click-to-Call then appealed the Board's final written decision to the Federal Circuit, contending that the decision should be vacated on the grounds that the inter partes review petition was untimely under Section 315(b). Before the Federal Circuit, the USPTO intervened and argued that the Board's institution decision, including its application of Section 315(b), was unreviewable under 35 U.S.C. 314(d). The Federal Circuit held that Section 314(d) does not preclude review of the USPTO's Section 315(b) determinations, agreed with Click-to-Call that the inter partes review petition was untimely, and vacated the Board's final written decision on that basis.

Petitioner filed a petition for a writ of certiorari to review the Federal Circuit's judgment. The Court granted certiorari

limited to the question whether the court of appeals properly exercised jurisdiction to review the Board's Section 315(b) determination. The federal respondent has filed a brief supporting reversal, arguing again that the Federal Circuit lacked jurisdiction to review that determination.

Although petitioner and the federal respondent have both filed briefs urging reversal of the Federal Circuit's judgment, the two parties have distinct perspectives on the question presented in this case. Click-to-Call has alleged that petitioner's predecessor in interest Ingenio, Inc. infringed the patent subject to the inter partes review in this case. Petitioner thus has a direct financial interest in the Board's decision finding certain claims in that patent to be unpatentable. The federal respondent has a broader institutional interest in the scope of judicial review of the Board's institution decisions and the proper operation of the inter partes review scheme. The USPTO's distinct institutional interest is reflected in Congress's affording the USPTO the right to intervene in any appeal from a decision by the Board in an inter partes review, 35 U.S.C. 143 -- a right that the USPTO exercised in this case. The government thus believes that participation by both petitioner and the federal respondent in the oral argument in this case would be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

SEPTEMBER 2019