

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

PARALLEL NETWORKS LICENSING, LLC,
Patent Owner.

IPR2015-00483,¹ IPR2015-00485²
Patents 5,894,554, 6,415,335

Before KEVIN F. TURNER, JEREMY M. PLENZLER, and
CHRISTOPHER L. CRUMBLEY, *Administrative Patent Judges*.

CRUMBLEY, *Administrative Patent Judge*.

TERMINATION

Vacating Institution and Dismissing Proceeding on Remand
35 U.S.C. §§ 314, 315(a)(1), 315(b)

¹ IPR2015-00484 has been consolidated with this proceeding; International Business Machines Corporation was joined as a party to this proceeding via Motions for Joinder in IPR2015-01729 and IPR2015-01731, then subsequently dismissed as a petitioner due to settlement (Paper 91).

² IPR2015-00486 has been consolidated with this proceeding; International Business Machines Corporation was joined as a party to this proceeding via Motions for Joinder in IPR2015-01732 and IPR2015-01734, then subsequently dismissed as a petitioner due to settlement (Paper 91).

These *inter partes* reviews return to us on remand following the decision of the United States Court of Appeals for the Federal Circuit in *Microsoft Corp. v. Parallel Networks Licensing, LLC*, 715 Fed. Appx. 1013 (Fed. Cir. 2017) (non-precedential). Paper 85.³ Before reaching the merits of the parties' dispute on remand, however, we determined that we should reconsider whether the Board properly instituted trial in the first instance, and requested briefing from the parties on the issue. Paper 86. Upon review of the record and the parties' supplemental briefing, we determine that institution of trial in these cases is barred by the application of 35 U.S.C. §§ 315(a)(1) and (b), and therefore *vacate* our prior decisions to institute trial.

I. BACKGROUND

We begin by summarizing the procedural history of these proceedings and the threshold issues to be addressed on remand.

A. Procedural History

The dispute between Petitioner Microsoft Corporation and Patent Owner Parallel Networks predates the Board's involvement by several years. In November of 2008, Microsoft filed an action for declaratory judgment of invalidity of U.S. Patent Numbers 5,894,554 ("the '554 patent") and 6,415,335 ("the '335 patent") in the District of Delaware. Ex. 1050. Parallel also sued Microsoft in May of 2009 for infringement of the '554 and '335 patents in the Eastern District of Texas. Ex. 1053. The parties

³ Citations herein are to the record in IPR2015-00483; identical issues, and substantively identical filings, are present in IPR2015-00485. This decision resolves the issues pending in both proceedings.

subsequently settled both of these cases in June of 2012 and entered into a Dismissal Agreement dated August 2, 2012. Ex. 2001. As a result, both the declaratory judgment action and the infringement action were voluntarily dismissed without prejudice.

We instituted these *inter partes* review trials on July 15, 2015. Paper 10. In so doing, we considered Parallel’s argument that the prior district court actions by the parties barred institution under 35 U.S.C. §§ 315(a)(1) and (b). Paper 10, 11–15. Specifically, Parallel argued that the filing of the declaratory judgment action by Microsoft before the Petition’s filing date of December 23, 2014, barred institution under § 315(a)(1), while the service of Parallel’s infringement complaint on Microsoft more than one year prior to the Petition barred institution under § 315(b). Paper 9, 7–12. We ultimately disagreed with Parallel on these arguments, however, because both complaints had been subsequently voluntarily dismissed without prejudice. Paper 10, 14. In so doing, we cited the “Board’s consistent position that a prior action that is voluntarily dismissed without prejudice does not give rise to 35 U.S.C. §§ 315 (a)(1) or (b) statutory bars.” *Id.*

Trial proceeded before the Board, with both parties addressing the patentability of the challenged claims of the patents. Neither party further addressed Parallel’s time-bar arguments, nor did Parallel challenge our determination in the Institution Decision that the bar was not applicable.

While trial was proceeding, the Office designated as precedential Section III.A. of the Board’s decision in *Oracle Corp. v. Click-to-Call Techs. LP*, IPR2013-00312, Paper 26 (PTAB Oct. 30, 2013) (Decision on Institution). That portion of the decision held that “the dismissal of the infringement suit . . . nullifies the effect of the service of the complaint and,

as a consequence, does not bar [the] Petitioners from pursuing an *inter partes* review.” *Id.* at 17.

We rendered our Final Written Decisions on August 11, 2016, holding that Microsoft had failed to prove by a preponderance of the evidence that any of the challenged claims were unpatentable. Paper 81, 26. Microsoft timely filed a Notice of Appeal to the Federal Circuit. Paper 83. At the time of the appeal, Federal Circuit precedent held that decisions by the Board regarding the existence of a time-bar under § 315(b) were nonappealable. *See Achates Reference Publishing Inc. v. Apple Inc.*, 803 F.3d 652, 658 (Fed. Cir. 2015).

On December 1, 2017, the Federal Circuit affirmed-in-part, vacated-in-part, and remanded our Final Written Decisions in these *inter partes* reviews. *Microsoft*, 715 F. App’x at 1024. Specifically, the Federal Circuit affirmed our claim construction and our determination that one embodiment disclosed by the prior art did not anticipate the challenged claims, but vacated our determination regarding anticipation in part to permit the Board to address anticipation by an alternate embodiment, as well as our conclusion as to the nonobviousness of the claims. *Id.* The court stated that it was remanding the case “for further proceedings consistent with this opinion.” *Id.*

While the cases were pending before us on remand, the Federal Circuit issued two decisions of particular relevance. First, on January 18, 2018, the *en banc* court issued a rehearing decision in *Wi-Fi One, LLC v. Broadcom Corp.*, 878 F.3d 1364 (Fed. Cir. 2018) (*en banc*) that overruled the prior *Achates* decision and held that “time-bar determinations under § 315(b) are not exempt from judicial review.” *Id.* at 1375.

Second, in *Click-to-Call Techs., LP v. Ingenio, Inc.*, 899 F.3d 1321 (Fed. Cir. 2018) (en banc in relevant part), the Federal Circuit held that § 315(b) “unambiguously precludes the Director from instituting an IPR if the petition seeking institution is filed more than one year after the petitioner, real party in interest, or privy of the petitioner ‘is served with a complaint’ alleging patent infringement,” and that § 315(b) “does not contain any exceptions or exemptions for complaints . . . that are subsequently dismissed, with or without prejudice.” *Id.* at 1330. The Office subsequently extended, via the issuance of a precedential decision, the reasoning in *Click-to-Call* to time bars under § 315(a)(1). *See Cisco Sys., Inc. v. Chrimar Sys., Inc.*, IPR2018-01511, Paper 11 (PTAB Jan. 31, 2019) (precedential). And the Office de-designated the Board’s prior precedential decision in *Click-to-Call*, cited above, as inconsistent with the Federal Circuit’s precedent.

We authorized the parties to submit briefs addressing what impact, if any, the decision in *Click-to-Call* should have on these proceedings. Paper 86. Microsoft filed an Opening Brief on Remand (Paper 88, “Remand Br.”), Parallel filed a Response (Paper 89, “Resp.”), and Microsoft filed a Reply (Paper 90).

While we were considering the parties’ supplemental briefing, on January 11, 2019, the petitioner in *Click-to-Call* filed a petition for writ of certiorari from the Supreme Court seeking review of the *en banc* Federal Circuit’s decision. The petition presented two questions for the Supreme Court’s review:

1. Whether 35 U.S.C. § 314(d) permits appeal of the PTAB’s decision to institute an inter partes review upon finding that § 315(b)’s time bar did not apply.
2. Whether 35 U.S.C. § 315(b) bars institution of an inter partes review when the previously served patent infringement complaint, filed more than one year before the IPR petition, had been dismissed without prejudice.

Petition for Writ of Certiorari, i, *Thryv, Inc., fka Dex Media Inc. v. Click-to-Call Techs., LP*, case 2015-1242, available at <https://go.usa.gov/xp9fF>.

Resolution of the second question presented would have direct applicability to the issues presented in this *inter partes* review.

On May 1, 2019, the Solicitor General filed a Brief in Opposition on behalf of the United States of America, opposing the grant of certiorari. On the second question presented, the government stated that, following the *en banc* Federal Circuit’s decision in *Click-to-Call*, “the Director of the USPTO has reconsidered the agency’s interpretation of Section 315(b) in light of that decision, and has determined that the court of appeals’ reading reflects the better view of Section 315(b).” Brief for the Federal Respondent in Opposition, 11–12, *Thryv, Inc., fka Dex Media Inc. v. Click-to-Call Techs., LP*, case 2015-1242, available at <https://go.usa.gov/xp9G4>. As a result, “the agency now agrees that the proper course would have been to decline to institute inter partes review in this case—in which event the Board’s now-vacated final written decision would not have been issued.” *Id.*

The Supreme Court granted certiorari on June 24, 2019, but limited its review to the first question presented in the petition. The Court’s decision issued April 20, 2020, and held that “[a] challenge to a petition’s timeliness

under § 315(b) thus raises ‘an ordinary dispute about the application of’ an institution-related statute,” and therefore § 314(d) prohibits appeal of the PTAB’s determinations regarding the time bar. *Thryv, Inc v. Click-To-Call Techs., LP*, — U.S. —, 140 S. Ct. 1367, 1373 (2020). As a result, the Federal Circuit had no jurisdiction to render its decision in *Click-to-Call*, and the court subsequently vacated its decision holding that the time-bar of § 315(b) does not have any exception for cases that are subsequently dismissed without prejudice. *Click-to-Call Techs., LP v. Ingenio, Inc.*, 810 F. App’x 881 (Fed. Cir. 2020). Nevertheless, as evidenced by the government’s Supreme Court brief, we understand that the United States Patent and Trademark Office has now adopted the position that the Federal Circuit’s resolution of this question was correct. And the Director has not de-designated as precedential Board decisions such as *Cisco Sys., Inc. v. Chrimar Sys., Inc.*, which rely on and adopt the Federal Circuit’s *Click-to-Call* rationale. Despite the vacatur of the Federal Circuit’s *Click-to-Call* opinion, therefore, we apply the reasoning of its decision in this case.

B. Issues Presented

There can be no dispute between the parties that our decision at institution—that the voluntary dismissals without prejudice of the 2008 declaratory judgment action and the 2009 infringement suit prevented application of the §§ 315(a)(1) and (b) bars—is in conflict with the current policy of the Office on this issue. If we were faced with the same question today, we would be compelled by controlling Board precedent, as well as the policy of the Office, to rule that the Petition in this *inter partes* review was time-barred. The issue before us, therefore, is not what outcome we would

reach if we were to revisit our prior determination, but rather whether we may revisit our prior decision at all.

As will be discussed below, Microsoft argues that we cannot. Addressing this argument requires resolution of two subsidiary questions. First, does the mandate rule, and specifically the scope of the remand from the Federal Circuit, preclude us from considering the time-bar issue? Further, and related to the first question, did Parallel forfeit the ability to argue the time-bar on remand by not raising it on appeal? And second, would considering the time-bar issue deprive Microsoft of due process, or otherwise result in manifest injustice? We take these issues in turn below.

II. ANALYSIS

A. The Mandate Rule

Microsoft's primary argument is that the mandate rule prevents us from revisiting the time-bar issue following the appeal to—and remand from—the Federal Circuit. Remand Br. 2–5. The mandate rule, a subset of the broader law-of-the-case doctrine, “dictates that ‘an inferior court has no power or authority to deviate from the mandate issued by an appellate court.’” *Banks v. United States*, 741 F.3d 1268, 1276 (Fed. Cir. 2014) (quoting *Briggs v. Pa. R. Co.*, 334 U.S. 304, 306 (1948)). The rule “compels compliance on remand with the dictates of a superior court and forecloses relitigation of issues expressly or impliedly decided by the appellate court.” *United States v. Lee*, 358 F.3d 315, 321 (5th Cir. 2004) (citing *United States v. Bell*, 988 F.2d 247, 251 (1st Cir. 1993)). The mandate, however, governs only issues that were presented to, and “actually decided” by, the appellate court. *Exxon Chem. Patents, Inc. v. Lubrizol Corp.*, 137 F.3d 1475, 1478 (Fed. Cir. 1998). Unless an issue has been explicitly addressed by the court,

or decided by “*necessary* implication,” the matter has been left open by the mandate and may be reached by the lower court on remand. *Laitram Corp. v. NEC Corp.*, 115 F.3d 947, 951 (Fed. Cir. 1997).

Microsoft argues that the Federal Circuit’s mandate in this case remanded only two issues to the Board for further proceedings: anticipation based on the UNIX sockets package embodiment, and obviousness.

Remand Br. 3. According to Microsoft, we are unable to reach any other issues, such as the question of whether a time-bar applies, because those issues are outside the scope of the mandate. *Id.*

This argument finds some support in the language of the Federal Circuit’s decision. The court concludes its discussion of anticipation with the following instructions:

We vacate the rejection of anticipation in part and remand for the Board to consider the issue of anticipation by *SWEB*’s disclosure of modifying the UNIX sockets package. The Board may consider whether Microsoft committed a waiver and, if so, the scope of the waiver. If the Board finds no waiver, it should consider whether Microsoft has met the required elements of anticipation. . . . And, if necessary, the Board should address Parallel’s contention that this disclosure in *SWEB* is not enabled. *Microsoft*, 715 F. App’x at 1021. Similarly, the section on obviousness concludes by noting that “[w]e remand for reconsideration of obviousness.” *Id.* at 1024. The opinion as a whole, however, ends with the broader statement that the court is “remand[ing] for further proceedings consistent with this opinion.” *Id.*

We do not interpret the Federal Circuit’s remand instructions, though detailed in the case of anticipation, to be a command that we must only consider those discrete issues on remand. While the court instructed us to

conduct particular inquiries during further proceedings, the decision does not restrict us to considering only those issues. This is especially so given the concluding language that the remand is for “further proceedings consistent with” the decision. When the Federal Circuit remands a case for a limited purpose, it typically says so explicitly. *See, e.g., INO Therapeutics LLC v. Praxair Distribution Inc.*, 782 F. App’x 1001 (Fed. Cir. 2019) (remanding “for the limited purpose of correcting the judgment as to unasserted claims”); *Tempur-Pedic Mgmt., Inc. v. FKA Distrib. Co.*, 481 F. App’x 615 (Fed. Cir. 2012) (remanding “for the limited purpose of the Board’s consideration of the parties’ motions.”).

In any event, the Federal Circuit has held that on remand the Board is permitted to revisit its determination whether to institute trial, even when the remand order contains specific instructions pertaining only to other legal issues. *See BioDelivery Scis. Int’l, Inc. v. Aquestive Therapeutics, Inc.*, 935 F.3d 1362, 1364 (Fed. Cir. 2019) (remand “to implement the Court’s decision in *SAS*” did not prevent Board from vacating decision to institute on remand). We may do the same here, so long as consideration of the time-bar issue is not foreclosed by the mandate rule.

Microsoft does not argue that the Federal Circuit expressly decided the time-bar issue in its decision. As Parallel notes, neither party addressed the issue in the briefing on appeal, meaning it was not presented to the court for review. Resp. 3. And we cannot conclude that the Federal Circuit decided the time-bar issue by necessary implication. The issues on appeal were ones of substantive patent law: claim construction, anticipation, and obviousness. The time-bar is a procedural and jurisdictional issue that is not “antecedent to deciding” these substantive issues, “either logically or

legally.” *See Laitram*, 115 F.3d at 951 (concluding that willfulness and claim identity issues were not antecedent to deciding an infringement issue, “either logically or legally”).

Having not been presented to, or decided by, the Federal Circuit, we cannot conclude that the time-bar issue is within the scope of the court’s mandate to the Board.

B. Forfeiture

Notwithstanding our determination regarding the mandate rule, however, we may also be precluded from revisiting the time-bar issue if we conclude that Parallel’s failure to argue the issue on appeal resulted in a forfeiture⁴ of the argument. Forfeiture is related to the law-of-the-case doctrine, in that it precludes revisiting issues that were decided by the trial tribunal but were not challenged in an earlier appeal. *See Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739 (D.C. Cir. 1995). But it is an “analytically distinct principle” that does not require any previous appellate court decision on the barred issue. *Id.* What it does require, however, is that the party to be barred must have had the obligation to raise the issue during the prior appeal. *See Laitram*, 115 F.3d at 954 (“The issue here, however, is not what NEC *could* supposedly have argued, but rather what it was

⁴ The parties address this issue as “waiver.” But as the Supreme Court has cautioned, waiver and forfeiture are distinct legal concepts, not synonyms. *Hamer v. Neighborhood Hous. Servs. of Chicago*, 583 U.S. —, 138 S. Ct. 13, 17 (2017) (“The terms waiver and forfeiture—though often used interchangeably by jurists and litigants—are not synonymous.”). The distinction is one of intent: while forfeiture is the failure to make a timely assertion of a right, waiver requires intentional abandonment of a known right. *See United States v. Olano*, 507 U.S. 725, 733 (1993).

required to argue, or indeed could *properly* have argued.”). Thus, the question before us is whether Parallel was required to argue the issue of the time-bar on appeal, either in a cross-appeal or as an alternate basis for affirming our Final Written Decision.

Parallel contends that it could not have appealed our Final Written Decision upholding the patentability of the challenged claims, because 35 U.S.C. § 319 only permits appeal by a party “dissatisfied with the final written decision,” and does not permit a prevailing party to appeal. Resp. 4. Nor could it have cross-appealed the decision, Parallel argues, because a cross-appeal is only proper “when a party seeks to enlarge its own rights under the judgment or to lessen the rights of its adversary.” *Id.* at 5 (quoting *Bailey v. Dart Container Corp.*, 292 F.3d 1360, 1362 (Fed. Cir. 2002)). We agree. Our original Final Written Decision entitled Parallel to a certificate confirming the patentability of the challenged claims under 35 U.S.C. § 318(b), and the estoppel provisions of § 315(e) would have prevented Microsoft from making certain unpatentability arguments in future proceedings. Application of the time-bar, on the other hand, would reverse our institution of trial and revert the parties to the *status quo ante*, where Microsoft would be free to raise its unpatentability arguments again. The time-bar argument, therefore, would diminish—not enlarge—Parallel’s rights under our Final Written Decision; Parallel had no obligation to file a cross-appeal on this issue. Indeed, it would be bizarre to require a winning party to cross-appeal an issue that would deprive it of significant benefits of its victory below.

Nor can we conclude that the time-bar issue was required to be raised as an alternative ground for affirming our decision on appeal. As Parallel

correctly notes, application of the time-bar would have resulted in vacatur of our Final Written Decision and dismissal of the *inter partes* review, not affirmance. Resp. 5–6. The time-bar issue, by definition, would not have been a basis for affirmance, but rather a basis for modifying our judgment. *See Radio Steel & Mfg. Co. v. MTD Prod., Inc.*, 731 F.2d 840, 844 (Fed. Cir. 1984) (“a party will not be permitted to argue before us an issue on which it has lost and on which it has not appealed, where the result of acceptance of its argument would be a reversal or modification of the judgment rather than an affirmance.”).

We conclude, therefore, that Parallel could not have raised the time-bar issue on appeal, either as a cross-appeal or alternative ground for affirmance, and cannot fairly be said to have forfeited the argument. Even if we were to be persuaded otherwise, however, we might still not conclude that forfeiture is appropriate here. “Precedent holds that a party does not waive an argument that arises from a significant change in law during the pendency of an appeal.” *Polaris Indus. Inc. v. Arctic Cat, Inc.*, 724 Fed. App’x 948, 949 (Fed. Cir. 2018) (nonprecedential). The parties hotly debate whether the change in law effected by the Federal Circuit’s decisions in *Wi-Fi One* and *Click-to-Call* during the pendency of the appeal was significant enough to preclude forfeiture. Remand Br. 4–5; Resp. 6; Reply 2–3. Because we have already decided that forfeiture would not apply, we need not wade into the parties’ arguments or evaluate the significance of the change in the law.⁵ We, therefore, conclude that Parallel has not forfeited its

⁵ If we were to address the change-in-law issue, the Federal Circuit’s conclusion in *Polaris* is instructive. *See Polaris Indus. Inc. v. Arctic Cat*,

arguments regarding the time-bar, and we are not precluded by the Federal Circuit's mandate from reaching the issue on remand.

C. Due Process and Manifest Injustice

Finally, Microsoft argues that application of the *Click-to-Call* precedent in this case would result in “manifest injustice,” depriving it of its due process rights. Remand Br. 6 (citing *Bradley v. Sch. Bd. of Richmond*, 416 U.S. 696, 711 (1974)). Specifically, Microsoft alleges that applying the time-bar in this case would deprive it of its ability to challenge the validity of the patents in any forum. *Id.* Obviously, this is true when the Board is the forum, because that is the intent of the § 315 time-bars: to deprive a party of using the Board as a forum for making unpatentability challenges that should have been raised elsewhere. But Microsoft also points out that, due to the vagaries of scheduling and estoppel, it was also deprived of raising the challenges as a defense to Parallel's infringement action in district court. *Id.*

Inc., 724 Fed. App'x. 948, 949 (Fed. Cir. 2018) (nonprecedential) (Supreme Court's *SAS Institute, Inc. v. Iancu* decision that the Board must institute trial on all challenged claims was a significant change in the law that precluded forfeiture). If *SAS*'s holding was significant, the decisions in *Wi-Fi One* and *Click-to-Call* are arguably significant as well. Not only was nonappealability of time-bar determinations settled law under binding precedent of the Federal Circuit's *Achates* decision, the Board had previously issued a precedential decision (*Cisco Sys., Inc.*, discussed *supra*) on the question of whether a complaint subsequently dismissed without prejudice invoked the time-bar that was consistent with the reasoning in *Achates*.

For purposes of this Decision, we accept as true the following facts taken from the Declaration of Stacy Quan⁶ (Ex. 1110) submitted by Microsoft on remand. Subsequent to our Final Written Decision upholding the validity of the challenged claims, the District Court held an infringement jury trial in May of 2017 that resulted in a verdict of no infringement in favor of Microsoft. Ex. 1110 ¶ 4(c). Parallel appealed this verdict to the Federal Circuit. *Id.* Due to the entry of our Final Written Decision, however, Microsoft was estopped by 35 U.S.C. § 315(e)(2) from raising invalidity defenses before the District Court that Ms. Quan testifies that she otherwise would have decided to preserve and develop absent estoppel. *Id.* at ¶ 8. According to Microsoft, application of the time-bar in this case will result in it being “estopped from relying on the grounds of invalidity set forth in its petitions before the jury, while at the same time being precluded from relying on those same grounds before the Board.” Remand Br. 7.

Parallel notes that Microsoft’s alleged “manifest injustice” would only occur if two conditions are met: first, the Federal Circuit would have to reverse the jury verdict of noninfringement; and second, the District Court would have to preclude Microsoft from arguing invalidity on remand, despite the vacatur of our institution decision. Resp. 6. Parallel argues that this outcome is too speculative to support ignoring our binding precedent on the time-bar issue. *Id.* We agree. Indeed, we note that the Federal Circuit has, contrary to Microsoft’s fears, affirmed the jury verdict of

⁶ Ms. Quan identifies her position as “Assistant General Counsel – Litigation” at Microsoft, and states that, in that role, she oversees Microsoft’s involvement in patent disputes. Ex. 1110 ¶ 3.

noninfringement. *Parallel Networks Licensing, LLC v. Microsoft Corp.*, 777 F. App'x 489, 494 (Fed. Cir. 2019) (nonprecedential). Microsoft's inability to argue invalidity before the District Court, rather than resulting in manifest injustice, appears to have been harmless. We see no obstacle in due process to applying the time-bar in this case.

III. CONCLUSION

As discussed above, we do not conclude that consideration of the time-bars of §§ 315(a)(1) or (b) is precluded by the Federal Circuit's mandate in this case. Nor do we believe that Parallel has forfeited this issue in any manner that should preclude our consideration of it. And we determine that application of the time-bars, if appropriate, would not result in manifest injustice to Microsoft.

We turn, then, to the time-bars themselves. As we have noted, Microsoft raises no argument that the time-bars do not apply here. Indeed, it is undisputed that Microsoft's declaratory judgment action was filed prior to its Petition, triggering the bar of § 315(a)(1); and Parallel's infringement complaint was served over a year prior to the Petition, triggering the bar of § 315(b). Under controlling Board precedent and the policy of the Office, the subsequent voluntary dismissals of these actions without prejudice have no effect on the application of the time-bars.

We, therefore, conclude that institution of trial in these cases was contrary to statute, and our Institution Decision was in error. Because the Board lacked the statutory authority to institute trial in this case, we must vacate our Institution Decision, and dismiss the Petition as improperly instituted.

IPR2015-00483, IPR2015-00485
Patents 5,894,554, 6,415,335

IV. ORDER

In light of the foregoing, it is hereby:

ORDERED that the Board's Institution Decisions (IPR2015-00483, Paper 10; IPR2015-00485, Paper 10) are *vacated*; and

FURTHER ORDERED that the Petitions (IPR2015-00483, Paper 1; IPR2015-00485, Paper 1) are *dismissed*, and no *inter partes* review trial is instituted.

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