

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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**MOTOROLA MOBILITY LLC**

Petitioner,

v.

Patent of **MICHAEL ARNOUSE**

Patent Owner.

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Case IPR2013-00010 (MT)

Patent 7,516,484

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Before **MICHAEL P. TIERNEY**, and **JONI Y. CHANG**, and **JENNIFER S. BISK**,  
*Administrative Patent Judges.*

**CHANG**, *Administrative Patent Judge.*

**DECISION**  
**Service Under 35 U.S.C. § 315(b)**

## BACKGROUND

The parties dispute whether Motorola Mobility LLC (“Motorola”) timely filed its petition for an *inter partes* review. Specifically, under 35 U.S.C. § 315(b), a party may not file a petition for *inter partes* review if the party had been served with a complaint alleging infringement more than one year previously.

On June 16, 2011, Michael Arnouse (“Arnouse”) filed a complaint with the United States District Court for the District of Vermont alleging that Motorola infringed the ’484 patent. (Ex. 2003.) Arnouse, however, did not provide Motorola with a summons when it sent the complaint. (PR 4.)

The issue before us is whether Motorola must be served with a summons and complaint before the time for filing an *inter partes* review petition begins to run.<sup>1</sup> We have jurisdiction under 35 U.S.C. §§ 6(b)(4) and 314(a).

## ANALYSIS

The relevant portion of 35 U.S.C. § 315(b) provides:

An *inter partes* review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner ... is **served with a complaint alleging infringement of the patent**. (Emphasis added.)

Arnouse asserts that the word “served” as set forth in 35 U.S.C. § 315(b) should be interpreted as “to deliver” or “to present a person with notice.” (PR 7-10.) In Arnouse’s view, the language of the statute does not require service of a summons, or service of process, in order to trigger the one-year time period. (PR 1 & 6.) Arnouse argues that according to the plain meaning of the statutory language, “served with a complaint” means to be provided a copy and receive

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<sup>1</sup> Other issues related to claim construction and prior art will be addressed in a separate, forthcoming, decision.

actual notice of a filed complaint for patent infringement. (AReply 1.<sup>2</sup>)

Motorola counters that, under federal law, a defendant is not “served with a complaint” unless the plaintiff complies with the service requirement of Rule 4 of the Federal Rules of Civil Procedure. (MBr. 1-3<sup>3</sup>.) Additionally, Motorola points out that although 28 U.S.C. § 1446 likewise does not include the words “summons” or “process,” the Supreme Court held that a named defendant’s time to remove is triggered by simultaneous service of the summons and complaint, and not by mere receipt of the complaint (*Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 347-48 (1999)). (MBr. 2-4.)

We do not adopt Arnouse’s statutory construction that a mere receipt of a complaint initiates the one-year time period. The Congress could have used language such as “to receive,” “to deliver,” or “to present” in the statute (*see e.g.*, 28 U.S.C. § 1446(b) (“after the receipt by the defendant...of a copy of the [complaint]”)), but Congress did not. Therefore, we are not convinced that the plain meaning of the statutory language in 35 U.S.C. § 315(b) is simply “to deliver” or “to present a person with notice.”

In interpreting statutes, we give effect to the intent of Congress by looking not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy. *Crandon v. United States*, 494 U.S. 152, 158 (1990); *Loughlin v Ling*, 684 F.3d 1289, 1291 (Fed. Cir. 2012); *In re Swanson*, 540 F.3d 1368, 1374-75 (Fed. Cir. 2008). Specifically, we begin with the language of the statute. *Duncan v. Walker*, 533 U.S. 167, 172 (2001). We then turn to the legislative history to determine Congress’s intent. *Timex V.I., Inc. v. United States*, 157 F.3d 879, 882 (Fed. Cir. 1998); *see also Garcia v. United States*, 469 U.S. 70,

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<sup>2</sup> Arnouse’s reply, paper 19, (“AReply.”) was authorized by the Board. Paper 16.

<sup>3</sup> Motorola’s brief, paper 18, (“MBr.”) was authorized by the Board. Paper 16.

76 (1984) (“In surveying legislative history, we have repeatedly stated that the authoritative source for finding the Legislature’s intent lies in the Committee Reports on the bill, which [represent] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.”) (citation omitted).

The word “served” has a definition that includes “to make legal delivery of (a notice *or process*)” or “to present (a person) with a notice *or process as required by law.*” (Black’s Law Dictionary, 1491, Ninth Edition (2009), emphasis added; Ex. 2008.) Contrary to Arnouse’s assertion that “served” simply means “to deliver” (PR 6), we cannot ignore the words “or process” and “as required by law” set forth in the definition.

Because the word “served” has more than one interpretation, we must look to the legislative history to ascertain the intent of Congress. *Deluxe Corp. v. United States*, 885 F.2d 848, 850 (Fed. Cir. 1989) (In a matter of statutory interpretation, “where the text itself does not clearly exclude alternate interpretations, we look first to the legislative history for illumination of the intent of Congress.”).

The Leahy-Smith America Invents Act (“AIA”) was enacted into law (Pub. L. 112-29, 125 Stat. 284 (2011)) on September 16, 2011. The purpose of the AIA is to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs. The AIA created new administrative trial proceedings to be conducted by the Board, including *inter partes* review as a cost-effective alternative to litigation.

The legislative history of 35 U.S.C. § 315(b) shows that the primary concern related to the one-year time period was to provide defendants sufficient time to fully analyze the patent claims, but not to create an open-ended process. *See* 157

Cong. Rec. S5429 (daily ed. Sept. 8, 2011) (statement of Senator Kyl) (“it is important that the section 315(b) deadline afford defendants a reasonable opportunity to identify and understand the patent claims that are relevant to the litigation”) (Ex. 2011); *see also* Meeting of H. Comm. on the Judiciary, Transcript of Markup of H.R. 1249, p. 72 (April 14, 2011) (statement of Judiciary Committee Chairman Lamar Smith) (“The *inter partes* proceeding in H.R. 1249 has been carefully written to balance the need to encourage its use while at the same time preventing the serial harassment of patent holders”) (Ex. 2012). Therefore, the interpretation of 35 U.S.C. § 315(b) must be consistent with the legislative intent to provide defendants sufficient time to analyze the patent claims so that they can decide whether to challenge the patentability of the claims in an *inter partes* review.

We do not agree that Arnouse’s construction is supported by the legislative history (PR 14). Rather, Arnouse’s construction would frustrate the legislative intent. A petitioner would not be required to appear as a defendant in a patent infringement action, until the petitioner is served with a summons. *Murphy Bros.*, 526 U.S. at 347 (an “individual or entity named as a defendant is not obliged to engage in litigation unless notified of the action, and brought under a court’s authority, by formal process”). Under Arnouse’s construction, the one-year time period would begin to run even when the petitioner is not yet a defendant in the litigation. We do not believe that the Congress intended to have the time period start before a petitioner is officially a defendant in a law suit.

Arnouse argues that one year from the receipt of a complaint would still provide Motorola reasonable opportunity to analyze the patent claims. (PR 13.) We are not persuaded by that argument. It is a common practice that a patent owner sends a “courtesy copy” of the complaint to a named defendant, and defers

service of process or service of a summons, to facilitate settlement discussions. Therefore, under Arnouse's construction, a patent owner's delay in service would effectively shorten the one-year time period that the Congress had carefully negotiated during the legislative process. Notably, Arnouse's own delay in service would have shortened Motorola's time by more than three months. (PR4; Ex. 1020; Ex. 1021.) Moreover, in the situation where a patent owner fails to serve a summons and then files a second complaint, the one-year time period could expire before a petitioner is officially a defendant in the infringement litigation. Such a result clearly would not be consistent with the legislative intent.

As to Arnouse's argument that interpreting 35 U.S.C. § 315(b) as requiring service of process would create an open-ended process when the defendant waives service of process (PR 14-15), we are not convinced. A patent owner who files a lawsuit in a Federal court and a petitioner who chooses to waive service of a summons are required to comply with the Federal Rules of Civil Procedure in the infringement action. Rule 4(d)(4) of the Federal Rules of Civil Procedure provides that "[w]hen the plaintiff files a waiver, proof of service is not required and these rules apply *as if a summons and complaint had been served at the time of filing the waiver*" (emphasis added). Therefore, in the situation where the petitioner waives service of a summons, the one-year time period begins on the date on which such a waiver is filed.

Accordingly, we conclude that Motorola must be served with a summons before the one-year time period for filing an *inter partes* review petition is triggered.

## CONCLUSION

For the foregoing reasons, we determine that Motorola's petition was timely filed in accordance with 35 U.S.C. § 315(b).

Case IPR2013-00010  
Patent 7,516,484

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