

# Seyfarth PTAB Blog



A legal look at Patent Trial and Appeal Board decisions and trends

## Members of “Unified Patents” Organization not Real Parties in Interest

By Patrick T. Muffo

Unified Patents is an organization that dedicates itself to defending litigants in non-practicing entity (“NPE”) litigation. Unified Patents refers to themselves as “The Anti-Troll” and allows members to join for a fee. When those members are sued, Unified Patents takes over the lawsuit based on their contractual obligation with the member. A question for PTAB purposes is whether the members are all “real parties in interest” such that they must be identified by the petitioner in an *Inter Partes* Review.

The PTAB held the members are **not** real parties in interest to IPR proceedings. A contrary ruling would have been a significant loss for Unified Patents because, under 35 U.S.C. §§ 315(e) and 325(e), the real party in interest may be estopped from asserting the same invalidity arguments in corresponding litigation. Also, if the real party in interest is not identified in the original petition, the petition may lose its filing date and a renewed petition may be filed after the one year deadline for filing an IPR petition (i.e., one year after being served with a complaint for patent infringement). Given the large number of Unified Patents members, the administrative burden of identifying all real parties also would have been significant.

In *Unified Patents, Inc. v. American Vehicular Sciences, LLC*, IPR2016-00364 (June 27, 2016 Decision to Institute Inter Partes Review) the PTAB focused on the lack of any control exercised by the members of Unified Patents. For example, the PTAB noted that Unified Patents served verified interrogatory responses certifying that none of its members have any control over the IPR. The PTAB was not persuaded by the fact that Unified Patents receives no revenue other than from its members and again focused on the control aspect of the relationship:

The mere fact that members provide payment to Unified’s services is insufficient to show that these members are funding this particular *inter partes* review. The evidence does not show an obligation on Unified’s part to file *inter partes* review proceedings on behalf of any member in return for payment, nor does it show that Unified’s members have any control over when and how Unified spends the revenue received from its members. Instead, the evidence shows that Unified makes all decisions regarding any *inter partes* review proceeding without input from its members, and that Unified alone bears all costs of any such proceeding.

## Takeaway

This case is important for any defendant who is part of a patent litigation insurance group, or a larger collaborative such as Unified Patents. As the decision makes very clear, whether a party is a “real party in interest” depends on how much that party controls the litigation. Technology companies should therefore be careful to work out contractual relationships that exclude control over IPR filings with, for example, patent insurance companies or indemnitees.

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