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Unified Patents Seeks USPTO Review Of Clouding IP's Patent

By David McAfee

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Law360, Los Angeles (September 17, 2013, 8:39 PM ET) — Unified Patents, which purports to counter the risk and cost of so-called patent troll litigation for clients, has filed for an inter partes review with the [U.S. Patent and Trademark Office](#) in an effort to combat “widespread litigation” brought by patent licensor Clouding IP LLC, according to documents filed Monday.

The filing requests the PTO’s review of Clouding’s U.S. Patent Number [6,738,799](#), which allegedly covers file synchronization technology deployed in the solutions of some of the most successful cloud storage companies. Clouding has sued a number of top companies, including [Oracle Corp.](#), [Apple Inc.](#), [Google Inc.](#), [Amazon.com Inc.](#), [Rackspace Hosting Inc.](#) and others, based on the ‘799 patent.

Unified’s request states that prior art references available before the ‘799 patent’s earliest priority date raise substantial new questions about the patentability of the patent’s claims.

“Clouding IP has gained a reputation as a patent ‘troll’ and is pursuing litigation against a number of defendants for allegedly infringing a patent we firmly believe to be invalid,” Kevin Jakel, founder of Unified, said in a statement Tuesday. “We want all nonpracticing entities to know that Unified will vigorously challenge invalid patents being asserted in cloud storage. We are pleased to be at the forefront of protecting strategic technologies from NPE activity.”

The IPR proceeding is a new PTO alternative to the high cost of patent litigation that is being utilized to break the business model of “patent trolls,” according to Unified.

North Carolina-based Clouding’s ‘799 patent has been the subject of two prior IPRs filed by Oracle. In those proceedings, the PTO instituted trial for the first IPR and found the claims of the ‘799 to be reasonably likely to be unpatentable.

Clouding then attempted to amend its claims — which Unified says was a form of conceding unpatentability of the challenged claims — but continued its assertion of the ‘799 patent in district court. Unified further says that both IPRs ended in late July as a result of a settlement between Oracle and Clouding.

The petition comes the same day as a Delaware federal judge **refused to dismiss** a willful infringement claim against Google in a patent infringement action brought by Clouding at the same time as he dismissed Clouding’s induced infringement claims.

Clouding launched that action against Google last year, asserting infringement of nine U.S. patents, including ‘799. Three months later, Clouding filed an amended complaint adding claims of induced and willful infringement. Google moved to dismiss the amended

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complaint in October, according to court documents.

"We are confident the patent trial and appeal board will institute review of the '799 patent and cancel the challenged claims," Michael L. Kiklis of [Oblon Spivak McClelland Maier & Neustadt LLP](#), counsel to Unified, said on Tuesday. "We are excited to support Unified Patents in its decision to challenge invalid patents in the hands of companies like Clouding IP."

Unified is represented by Michael L. Kiklis and Bradley D. Lytle of Oblon Spivak McClelland Maier & Neustadt LLP.

Counsel information for Clouding wasn't immediately available Tuesday.

The case is Unified Patents Inc. v. Clouding IP LLC, IPR-2013, before the Patent Trial and Appeal Board.

--Editing by Rebecca Flanagan.

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