

From: [Ivey, Christopher D.](#)
To: [Nathan Lowenstein](#)
Cc: [Andrew Oliver \(aoliver@atwiplaw.com\)](mailto:aoliver@atwiplaw.com)
Subject: RE: OpenSky
Date: Wednesday, February 23, 2022 2:23:12 PM

Nate,

We understand that a deal with OpenSky does not benefit your client unless it ultimately leads to dismissal of the petition, or affirmance of the claims. In particular, we recognize that if OpenSky and VLSI were to reach an agreement to dismiss OpenSky's petition, VLSI will still have to address the joinder petitions from both Intel and PQA. Accordingly, we propose a structure that builds on your earlier proposal, accounts for those joinder petitions, and leaves VLSI in a very strong position.

We would prefer to work on the construct of a proposed deal and then discuss numbers.

As an initial matter, it bears stating that Intel's joinder petition has no merit. Intel's petition is identical to the petition denied in the precedential Apple v. Uniloc case and doesn't address the fairness issues required by the Proppant case. Accordingly, we think it's extremely unlikely that Intel's petition is granted. The PQA petition, however, is different. Unlike Intel, PQA has never previously sought IPR review of this patent and they are not time barred from pursuing one now. We believe (absent a settlement with OpenSky) there is a substantial risk that PQA's petition will be granted.

Regardless of the relative merits of the two joinder petitions, if VLSI and OpenSky were to settle and move to dismiss OpenSky's petition AND if the Board grants the motion to dismiss before taking up the joinder petitions, then the Board would deny both joinder petitions since there would no longer be anything to join. Accordingly, there is a substantial value to VLSI in settling with OpenSky before the Board takes up either joinder petition.

Still, there is a risk that the Board will sit on OpenSky's motion to dismiss until after it takes up PQA's joinder motion. However, a well-timed settlement between VLSI and OpenSky can account for this unlikely outcome and still leave VLSI in a strong position should that occur. PQA would be joining the OpenSky trial in the state that OpenSky had left it. If PQA were to join a trial where VLSI had already filed its patent owner response, and if a deposition of OpenSky's expert witness had not occurred, PQA would be joining a trial with a potentially fatal evidentiary omission that PQA would be unable to remedy. By that point, it would be too late for PQA to provide a deposition of the expert and VLSI would have a very strong objection to PQA's reliance on expert testimony. We know this is a strong objection because even the potential existence of this evidentiary issue kept the Board from instituting OpenSky's other IPR.

With all that out of the way, here is a construct for discussion purposes related to this petition proposed by OpenSky:

- Parties agree to work together to secure dismissal or defeat of the petition.

- OpenSky agrees not to negotiate with Intel or PQA
- VLSI takes full three months to oppose PQA joinder
- VLSI files its patent owner response
- OpenSky refuses to pay expert for time at deposition so expert does not appear for deposition
- The day after VLSI files response, OpenSky and VLSI file motion to dismiss

Payment structure:

- First payment upon execution of agreement
- Second payment upon denial of both joinder petitions. There could be an alternative second payment if joinder is granted but claims affirmed because of OpenSky's refusal to produce witnesses.

Let me know if this construct facilitates further discussion between OpenSky and VLSI.

Thanks,
Chris


Christopher D. Ivey
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From: Nathan Lowenstein <lowenstein@lowensteinweatherwax.com>
Sent: Tuesday, February 22, 2022 5:30 PM
To: Ivey, Christopher D. <Civey@stradlinglaw.com>
Cc: Andrew Oliver (aoliver@atwiplaw.com) <aoliver@atwiplaw.com>
Subject: RE: OpenSky

Chris,

As I said on our call, PQA filed a motion for joinder and, as a consequence, filed a separate IPR petition. Thus, PQA has filed its own IPR petition challenging the '759 patent. As also noted, if OpenSky would like to make a proposal, we can consider it.

Thanks,

Nate

From: Ivey, Christopher D. <Civey@stradlinglaw.com>
Sent: Tuesday, February 22, 2022 4:10 PM
To: Nathan Lowenstein <lowenstein@lowensteinweatherwax.com>
Cc: Andrew Oliver (aoliver@atwiplaw.com) <aoliver@atwiplaw.com>
Subject: RE: OpenSky

Nate,

Following our call, we checked the PTAB website and didn't see that PQA had filed a separate petition for IPR on patent 7,725,759. It only has the joinder petition on OpenSky's IPR for that patent. I thought you said that PQA had its own IPR on patent 7,725,759. Can you clarify?

Chris


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From: Nathan Lowenstein <lowenstein@lowensteinweatherwax.com>
Sent: Tuesday, February 22, 2022 10:33 AM
To: Ivey, Christopher D. <Civey@stradlinglaw.com>
Cc: Andrew Oliver (aoliver@atwiplaw.com) <aoliver@atwiplaw.com>
Subject: RE: OpenSky

That works.

From: Ivey, Christopher D. <Civey@stradlinglaw.com>
Sent: Tuesday, February 22, 2022 10:30 AM
To: Nathan Lowenstein <lowenstein@lowensteinweatherwax.com>
Cc: Andrew Oliver (aoliver@atwiplaw.com) <aoliver@atwiplaw.com>
Subject: RE: OpenSky

Thanks. I'll give you a call at 3:00. Can I call you at (310) 307-4502?



Christopher D. Ivey

Shareholder

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From: Nathan Lowenstein <lowenstein@lowensteinweatherwax.com>
Sent: Tuesday, February 22, 2022 9:09 AM
To: Ivey, Christopher D. <Civey@stradlinglaw.com>
Cc: Andrew Oliver (aoliver@atwiplaw.com) <aoliver@atwiplaw.com>
Subject: RE: OpenSky

Chris,

I'm around and can talk 11-11:30 or 2:30-4.

Thanks,

Nate

From: Ivey, Christopher D. <Civey@stradlinglaw.com>
Sent: Monday, February 21, 2022 4:41 PM
To: Nathan Lowenstein <lowenstein@lowensteinweatherwax.com>
Cc: Andrew Oliver (aoliver@atwiplaw.com) <aoliver@atwiplaw.com>
Subject: OpenSky

Nate,

I wanted to check back in with you to see if there is any current interest in continuing discussions with OpenSky. Let me know if you're available for a quick call.

Thanks,
Chris



Christopher D. Ivey

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