NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

APPLE INC., VISA INC., VISA U.S.A., INC.,
Appellants

v.

UNIVERSAL SECURE REGISTRY LLC,
Appellee

2020-1394, -1396, -1397, -1398

Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. CBM2018-00024 and CBM2018-00025.

ON MOTION

Before LOURIE, DYK, and REYNA, *Circuit Judges*.

DYK, *Circuit Judge*.

O R D E R

Universal Secure Registry LLC (USR) moves to dismiss these appeals for lack of jurisdiction. Apple Inc., Visa Inc., and Visa U.S.A., Inc. (collectively, "Apple") oppose the motion. USR replies.

In May 2018, Apple filed three petitions with the Patent Trial and Appeal Board seeking institution of a Covered Business Method (CBM) review of U.S. Patent No. 8,577,813 ("the '813 patent") owned by USR. The Board initially instituted two CBM reviews but subsequently reconsidered and vacated its institution decisions and terminated both reviews based on Apple's failure to show that the '813 patent qualifies for CBM review. Apple seeks review of the Board's termination decisions.

The scheme that governs judicial review of CBM proceedings clearly differentiates between the Board's final written decision after institution, which is appealable, *see* 35 U.S.C. §§ 328(a), 329; 28 U.S.C. § 1295(a)(4)(A), and the Director's discretionary determination not to institute review proceedings, which is "final and nonappealable." 35 U.S.C. § 324(e) ("The determination by the Director whether to institute a post-grant review under this section shall be final and nonappealable.").

The Board's decisions reconsidering whether to institute the proceedings and determining not to do so clearly fall within the latter category. *See GTNX, Inc. v. INTTRA, Inc.*, 789 F.3d 1309, 1312 (Fed. Cir. 2015) (holding a "determination . . . whether to institute" proceedings "is not limited to an *initial* determination to the exclusion of a determination on reconsideration"); *see also BioDelivery Scis. Int'l, Inc. v. Aquestive Therapeutics, Inc.,* 935 F.3d 1362, 1366 (Fed. Cir. 2019).

We therefore agree with USR that Apple is barred from seeking review of the Board's termination decisions and that dismissal of the appeals is appropriate.

Accordingly,

IT IS ORDERED THAT:

(1) The motion to dismiss is granted.

(2) Each side shall bear its own costs.

FOR THE COURT

April 30, 2020 /s/ Peter R. Marksteiner
Date Peter R. Marksteiner
Clerk of Court

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ISSUED AS A MANDATE: April 30, 2020