

16-1071, 15-1483  
**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

J. CARL COOPER, *et al.*,

Plaintiffs-Appellants,

v.

MICHELLE K. LEE, Director of U.S. Patent and Trademark Office, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Virginia,  
Alexandria Division, in Case No. 1:14-cv-672-GBL-JFA, Judge Gerald Bruce Lee.

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**APPELLANTS J. CARL COOPER AND ECHARGE LICENSING LLC'S  
UNOPPOSED MOTION FOR SUMMARY AFFIRMANCE**

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Form 9

FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Cooper et al. v. Lee et al.

No. 15-1483

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party) appellants certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is: J. Carl Cooper; eCharge Licensing, LLC

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: N/A

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are: None

4. [X] The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are: Robert P. Greenspoon, William W. Flachsbart, Flachsbart & Greenspoon, LLC Amy S. Owen, Kristin A. Zech, Nicholas V. Cumings, BrigliaHundley, P.C.

March 23, 2015 Date

/s/ Robert P. Greenspoon Signature of counsel Robert P. Greenspoon Printed name of counsel

Please Note: All questions must be answered cc:

**APPELLANTS J. CARL COOPER AND ECHARGE LICENSING LLC'S  
UNOPPOSED MOTION FOR SUMMARY AFFIRMANCE**

Appellants J. Carl Cooper and eCharge Licensing LLC, by and through their attorneys, and unopposed by Appellees, respectfully move for summary affirmance in this appeal based on this Court's recent decision in *MCM Portfolio LLC v. Hewlett-Packard Co.*, No. 2015-1091 (Fed. Cir. Dec. 2, 2015). In support thereof, Appellants state as follows:

**BACKGROUND**

This case involves a constitutional challenge to *inter partes* review ("IPR") proceedings before the United States Patent and Trademark Office. Appellants sought a declaratory judgment in the district court that IPR proceedings are unconstitutional under Article III Separation of Powers principles, as well as the Seventh Amendment's guarantee of a jury trial in Suits at common law. The district court denied Appellants' motion for summary judgment of unconstitutionality, and instead granted Appellees' cross-motion.

Appellants timely appealed to the United States Court of Appeals for the Fourth Circuit. After the parties had completed briefing and were preparing for oral argument, the Fourth Circuit transferred the case to this Court (*See* Case No. 15-1205, ECF No. 52). On November 23, 2015, this Court stayed this appeal pending resolution of *MCM Portfolio* because the two cases involve "issues that are closely related," and solicited the parties to submit views about how to proceed within 14

days of the *MCM Portfolio* decision (ECF No. 18 at 2).

On December 2, 2015, the Court issued its opinion in *MCM Portfolio*, upholding IPR proceedings against MCM's constitutional challenge.

### DISCUSSION

While Appellants strongly disagree with the Court's decision in *MCM Portfolio* that IPR proceedings are constitutional, Appellants concede that because the issues in this appeal are closely related to those in *MCM Portfolio*, summary affirmance is appropriate. *See United States v. Fortner*, 455 F.3d 752, 754 (7th Cir. 2006) (“[S]ummary affirmance may be appropriate when a recent appellate decision directly resolves the appeal.”) (citing *United States v. Young*, 115 F.3d 834, 836 (11th Cir.1997) (per curiam)). In the interests of preserving the Court's and the parties' resources, Appellants respectfully request that this Court grant summary affirmance of the district court's judgment. In making this request, Appellants preserve all rights to subsequent review.

Dated: December 3, 2015

Respectfully submitted,

/s/ Robert P. Greenspoon

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served upon all counsel of record on December 3, 2015, via the Court's CM/ECF system.

/s/ Robert P. Greenspoon  
Robert P. Greenspoon