

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.

Petitioner

v.

SMARTFLASH LLC

Patent Owner

Case CBM2015-00015

Patent 8,118,221

PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION FOR
JOINDER OR, IN THE ALTERNATIVE, FOR COORDINATION OF
SCHEDULE

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I. Introduction

On October 30, 2014, including the Petition for this proceeding, Petitioner filed three CBM Petitions (CBM2015-00015 to -00017) (“the initial 2015 Petitions”) in addition to the twelve CBM Petitions (CBM2014-00102 to -00113) (“the 2014 Petitions”) that Petitioner had previously filed. Also on October 30, 2014, Petitioner filed a Motion for Joinder Under 35 U.S.C. 325(c) and 37 C.F.R. 42.222(b) or in the Alternative, For Coordination of Schedule, and Request for Shortened Response Time For Patent Owner’s Preliminary Response (Paper 3). Petitioner filed the initial 2015 Petitions on the last possible day to seek consolidation with the proceedings instituted for CBM2014-00102, -00106, and -00108. On November 3, 2014, Petitioner filed its Petition in CBM2015-00018.

During a conference call on November 7, 2014, Patent Owner objected to the shortening of Patent Owner’s Time for its Preliminary Response (Paper 6, page 2). By its Order on November 13, 2014 (“the November Scheduling Order”), the PTAB ultimately set December 15, 2014 as the shortened due date for Patent Owner’s Preliminary response when it held:

The 2015 set of petitions assert substantially overlapping arguments and prior art as asserted in the 2014 set of petitions, as well as challenges pursuant to 35 U.S.C. § 101, which raise purely legal issues. *Given that we may need to coordinate schedules should we*

institute trials in the 2015 set of petitions, we expedited the due date for the Patent Owner Preliminary Responses in CBM2015-00015, CBM2015-00016, CBM2015-00017, and CBM2015-00018 to December 15, 2014. We also indicated that we would extend the due date for the Patent Owner Responses in CBM2014-00102, CBM2014-00106, CBM2014-00108, and CBM2014-00112. The extended due date for these cases will be determined in due course.

(*Id.*) (Emphasis added.)

Given that the November Scheduling Order states “that we *may need to coordinate schedules* should we institute trials in the 2015 set of petitions,” (*id.*) the PTAB has only ruled on the portion of the Motion related to Petitioner’s Request for Shortened Response Time For Patent Owner’s Preliminary Response. Accordingly, Patent Owner files this Opposition to the portion of the Motion related to Joinder Under 35 U.S.C. 325(c) and 37 C.F.R. 42.222(b) or in the Alternative, For Coordination of Schedule.

II. Response to Statement of Material Facts

1.-4. Admitted.

5. Denied. To the extent that Petitioner is implying that it has properly filed a Petition challenging those grounds, Patent Owner denies that such a Petition has been properly filed in this proceeding.

6. Denied. To the extent that Petitioner is implying that it has properly filed a Petition challenging those grounds, Patent Owner denies that such a Petition has been properly filed in this proceeding.

7. Denied. To the extent that Petitioner is implying that it has properly filed a Petition that relies on such a supporting declaration, Patent Owner denies that such a Petition has been properly filed in this proceeding.

III. Statement of Material Facts

1. Exhibit 2001 is a true and accurate copy of a redline document, received by Patent Owner from the Petitioner, of the original Petition filed October 30, 2014 as compared to the Corrected Petition filed November 21, 2014.

IV. Discussion

Petitioner alleges that the “requested joinder will serve to secure the just, speedy, and inexpensive resolution of these proceedings,” (Motion at 4) but the conduct of Petitioner, through the protracted filing of its multitude of Petitions, has ensured that these proceedings will be anything but inexpensive, speedy and just.

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