

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

GOOGLE INC.
Petitioner,

v.

SMARTFLASH LLC
Patent Owner.

Case CBM2015-00125
Patent No. 7,334,720 B2

**PETITIONER GOOGLE INC.'S REPLY IN SUPPORT OF ITS MOTION
FOR JOINDER UNDER 35 U.S.C. § 325(C) AND 37 C.F.R. § 42.222**

Mail Stop "Patent Board"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

With respect to Google's Motion for Joinder, the Board should enter an order consistent with the Board's decision in *Samsung Electronics America, Inc. v. Smartflash LLC*, No. CBM2015-00059, Pap. 13 (Aug. 5, 2015). Specifically, the Board should grant Google's motion to consolidate its challenge to claims 1 and 15 of the '720 patent with the already pending proceedings in CBM2015-00028 and CBM2015-00029, on the same schedule and based on the same arguments and evidence as those already at issue in those proceedings.

I. GOOGLE'S CHALLENGE TO CLAIMS 1 AND 15 SHOULD BE CONSOLIDATED WITH THE APPLE CBM PROCEEDINGS

Google's Motion for Joinder requested one of two forms of relief (following any institution decision): (i) joinder of Google's arguments and evidence to the Apple CBM proceedings¹ or (ii) joinder of Google to Apple's arguments and evidence in the Apple CBM proceedings. (Mot. at 9-10.) After Google filed its Motion, the Board issued a decision regarding an analogous motion for joinder filed by Samsung. *Samsung Elecs. Am., Inc. v. Smartflash LLC*, No. CBM2015-00059, Pap. 13 at 6-7 (Aug. 5, 2015). In light of the Board's decision to join Samsung to Apple's arguments and evidence in the Apple CBM proceedings, Google reiterates its request for analogous relief here.

¹ Claim 1 is challenged by Apple in CBM2015-00028. Claim 15 is challenged by Apple in CBM2015-00029.

Nothing in Smartflash’s Opposition to Google’s Motion counsels against joining Google to Apple’s arguments and evidence in the Apple CBM proceedings. For example, Smartflash argues that joinder is impractical as a matter of scheduling (Opp. at 2-4), but joining Google to Apple’s arguments and evidence does not require any departure from the Scheduling Order issued in the Apple CBM proceedings. *See Samsung*, CBM2015-00059, Pap. 13 at 6. Similarly, Smartflash argues that joinder is inappropriate because Google and Apple have relied on different exhibits and witnesses in making their respective challenges (Opp. at 4-5), but this consideration is irrelevant with respect to simply joining Google to *Apple’s* arguments and evidence. *See Samsung*, CBM2015-00059, Pap. 13 at 6. Indeed, for all of the reasons that the Board consolidated Samsung’s and Apple’s proceedings “based on the same schedule, evidence, and argument proffered in the Apple CBM proceedings,” *id.* at 5-7, the Board should do the same here for Google’s challenges to claims 1 and 15 of the ’720 patent.²

II. SMARTFLASH’S REQUEST THAT THE BOARD DECLINE TO INSTITUTE CBM REVIEW OF CLAIMS 1 AND 15 SHOULD BE DENIED

In its Opposition to Google’s Motion, Smartflash contends that Google’s petition challenging claims 1 and 15 of the ’720 patent should be denied outright

² Similar procedures to those ordered in *Samsung*, CBM2015-00059, Pap. 13 at 9-10, (regarding, for example, consolidated filings) should also be ordered here.

under 35 U.S.C. § 325(d), solely because CBM review of the same claims has now been instituted in the context of the Apple CBM proceedings. (Opp. at 5-6.) But the Board is “not required to deny a petition merely because the same or substantially the same . . . arguments previously were considered in another proceeding.” *Chicago Mercantile Exch., Inc. v. 5th Market, Inc.*, No. CBM2015-00061, Pap. 9, at 39-40 (July 16, 2015). And the Board should not deny such a petition under circumstances where, as here, (i) CBM review of the challenged claims should be instituted on the merits of Google’s petition and (ii) a newly instituted CBM review can immediately be consolidated with the “schedule, evidence, and argument” of an earlier proceeding. *See Samsung*, CBM2015-00059, Pap. 13 at 7.

* * *

For the foregoing reasons, the Board should grant Google’s Motion for Joinder to Apple’s arguments and evidence with respect to claims 1 and 15 of the ’720 patent.

Dated: August 31, 2015

Respectfully submitted,

/Raymond N. Nimrod/

Raymond N. Nimrod (Reg. No. 31,987)
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: 212-849-7000
Fax: 212-849-7100

Charles K. Verhoeven
Melissa J. Baily
Andrew M. Holmes (Reg. No. 64,718)
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
Telephone: 415-875-6600
Fax: 415-875-6700

Counsel for Petitioner Google Inc.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.