

Filed on behalf of Cardiocom, LLC

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CARDIOCOM, LLC  
Petitioner

v.

ROBERT BOSCH HEALTHCARE SYSTEMS, INC.  
Patent Owner

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Case IPR2013-00451  
Patent 7,587,469

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**MOTION FOR JOINDER OF PETITION FOR *INTER PARTES*  
REVIEW OF U.S. PATENT NO. 7,587,469  
FILED ON FEBRUARY 14, 2014 WITH  
IPR2013-00451 INSTITUTED ON JANUARY 16, 2014**

## I. Relief Requested

Pursuant to 35 U.S.C. §315(c) and 37 C.F.R. §42.122(b), Petitioner Cardiocom, LLC (“Cardiocom” or “Petitioner”), hereby moves for joinder of the petition for *inter partes* review IPR2014-00436 of claim 1-22 of U.S. Patent No. 7,587,469 (“the ‘469 Patent”) filed by Medtronic, Inc. on February 14, 2014 with the *inter partes* review IPR2013-00451 filed by Cardiocom, LLC (“Cardiocom”) as to the same ‘469 Patent and instituted on January 16, 2014.

## II. Statement of Materials Facts

1. On April 26, 2013, Robert Bosch Healthcare Systems filed a patent infringement lawsuit against Cardiocom, LLC and Abbott Diabetes Care in the United States District Court for the Eastern District of Texas, Case No.: 2:13-cv-349 alleging, among other patents, infringement of the ‘469 patent.
2. On July 17, 2013, Cardiocom filed a petition for *inter partes* review requesting cancellation of claims 1-22 of the ‘469 patent. *Cardiocom, LLC v. Robert Bosch Healthcare Systems, Inc.*, IPR2013-00451 (P.T.A.B.) (“First Petition”). The details of related proceedings and related patents can be found in the Petition for *Inter Partes* Review, filed on July 17, 2013, in IPR2013-00451.
3. Subsequently, Medtronic acquired Cardiocom.

4. On January 16, 2014, the Board instituted trial as to claims 1, 2, and 5-10 in IPR2013-451. The Board, however, did not institute trial as to claims 3-4 and 11-22. *See* IPR2013-00451, Paper 23 at 13, 29.
5. On February 13, 2014, the Board held its initial conference call in IPR2013-00451 with the parties. In Petitioner's list of proposed motions, Cardiocom identified that it would file a motion to join IPR2013-00451 with a Petition for *inter partes* review being filed by Medtronic, Inc. February 14, 2014.
6. On February 14, 2014, Medtronic filed a petition for *inter partes* review (IPR2014-00436) of the '469 patent ("Second Petition") seeking the cancellation of claims 1-22.
7. Along with Medtronic's petition for *inter partes review* of the '469 patent (Second Petition), Medtronic also filed a motion to join that petition with the present *inter partes review*, IPR2013-00451.
8. Medtronic's grounds for challenging the patentability of claims 1-22 in the Second Petition are based on prior art references (Cohen and Wahlquist) included in the First Petition, and on a new prior art reference, European Publication No. 0342 859 to Kaufman, et al. ("Kaufman") (IPR2014-00436 at Ex. 1003), not part of IPR2013-00451. Kaufman in combination with the previously-cited art addresses the reasons *inter partes* review was denied as to claims 3-4 and 11-22 and further demonstrates claims 1-22 are invalid.

### III. Governing Rule(s)

§42.122 Multiple Proceedings and Joinder.

(b) Request for Joinder. Joinder may be requested by a patent owner or petitioner. Any request for joinder must be filed, as a motion under §42.22, no later than one month after the institution date of any *inter partes* review for which joinder is requested. The time period set forth in §42.101(b) shall not apply when the petition is accompanied by a request for joinder.

### IV. Discussion

The Leahy-Smith America Invents Act (AIA) permits the Patent Trial and Appeal Board (“the Board”) to join *inter partes* review proceedings in its discretion. *See* 35 U.S.C. §315(c). A motion for joinder must be filed no later than one month after the institution date of any *inter partes* review for which joinder is requested. *See* 37 C.F.R. §42.122(b). This joinder motion is timely as IPR2013-00451 was instituted on January 16, 2014.

Joinder is appropriate because it will be more efficient for both the Board and the parties to address the issues in both proceedings, which are related, in one IPR rather than separately. The Second Petition seeks cancellation of claims 1-22 of the ‘469 Patent based on new prior art in combination with prior art which supported the grant in part of the First Petition. Moreover, Medtronic acquired Cardiocom, the Petitioner in IPR2013-00451, and thus combining the two *inter*

*partes* reviews will be more efficient as the two Petitioners are related and have the same counsel representing them in both proceedings. Both Medtronic and Cardiocom support joinder and have each filed a motion for joinder. Joinder is also appropriate as there will be no discernable prejudice to the Patent Owner from joining the two proceedings. Pursuant to 37 C.F.R. §42.122 (b), the instant motion was timely filed within one month of the Board instituting IPR2013-00451.

In IPR2013-451, the Board instituted trial on claims 1, 2 and 5-10 as being obvious over Cohen and Wahlquist and alternatively as being obvious over Cohen, Wahlquist, Neumann and Jacobs. However, the Board did not institute trial as to claims 3, 4, and 11-22, finding that Cohen does not teach a “single housing unit” recited in claim 3 and the “household appliance” recited in claims 4 and 11-22. IPR2013-00451, Paper 23 at 13. After and based on the Board’s findings and its claim construction in IPR2013-00451, Medtronic identified a prior art reference, Kaufman, that in combination with the previously-cited art cures the deficiencies that led the Board to deny trial on claims 3, 4 and 11-22, and prepared the Petition filed on February 14, 2014.

Medtronic’s Petition includes two grounds of unpatentability: (1) Claims 1-6, 11-12 and 17-18 are obvious over Cohen in view of Kaufman, and (2) all claims are unpatentable as obvious over Cohen in view of Kaufman and further in view of

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