

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MATCH.COM LLC and PEOPLE MEDIA, INC.
Petitioners

v.

B.E. TECHNOLOGY, L.L.C.
Patent Owner

IPR Case No.: To be Assigned

**MOTION FOR JOINDER UNDER 35 U.S.C §§ 315(c),
37 C.F.R. §§ 42.22 AND 42.122(b)**

Mail Stop **Patent Board**
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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Alexandria, VA 22313-1450

I. INTRODUCTION

Match.com LLC and People Media, Inc. (“Petitioners”) submit concurrently herewith a Petition for *Inter Partes* Review of U.S. Patent No. 6,628,314 (“the ’314 Patent”) (“Petition”) based on identical grounds that form the basis for pending IPR proceeding, Case No. IPR2014-00053 (“the Facebook IPR”).

Pursuant to 35 US.C. § 315(c), Petitioners respectfully move that this Petition be instituted and joined with the Facebook IPR. Petitioners merely request an opportunity to join with the Facebook IPR as an “understudy” to Facebook, only assuming an active role in the event Facebook settles with B.E. Technology. Thus, Petitioners do not seek to alter the grounds upon which the Board has already instituted the IPR, and joinder will have no impact on the existing schedule in the IPR. Under rule 42.122, this Motion is timely as it was filed within one month of the granting of IPR2014-00053.

II. BACKGROUND AND RELATED PROCEEDINGS

B.E Technology (“B.E. Tech”) is the owner of the ’314 Patent. In 2012, B.E. Tech sued ten different companies for alleged infringement of the ’314 Patent (“Underlying Litigation”). In October of 2013, three of the defendants, Facebook, Microsoft, and Google, filed petitions for *inter partes* review of the ’314 Patent. Facebook filed two separate petitions as well as a request to consolidate both of its petitions which the Board said it would discuss at the initial conference call. All

four petitions were granted on April 9, 2014. *See Facebook v. B.E. Technology, L.L.C.* (Case No. IPR2014-00053); *Microsoft Corporation v. B.E. Technology, L.L.C.* (Case No. IPR2014-00039); *Facebook v. B.E. Technology, L.L.C.* (Case No. IPR2014-00052); and *Google Inc. v. B.E. Technology, L.L.C.* (Case No. IPR2014-00038).

III. REQUIREMENTS FOR MOTION FOR JOINDER ARE MET

Petitioners respectfully submit that joinder is appropriate because: (1) it will promote efficient determination of the validity of the '314 Patent without prejudice to Facebook or B.E. Tech; (2) this petition raises only the same grounds of unpatentability as Facebook and for which the Board instituted review; (3) it would not affect the pending schedule in the Facebook IPR in any way nor increase the complexity of that proceeding in any way; and (4) Petitioners are willing to accept an understudy role to minimize burden and schedule impact. Absent joinder, Petitioners could be prejudiced if the Facebook IPR is terminated before a final written decision is issued as they would have to litigate the same positions at the District Court under a higher burden of proof. Accordingly, joinder should be granted.

a. Joinder Will Promote the Efficient Determination of Validity Without Prejudice to Facebook or B.E. Tech.

Granting joinder and permitting Petitioners to assume the understudy role will not prejudice Facebook or B.E. Tech. Petitioners raise no issues that are not

already before the Board, such that joinder would not affect the timing of the IPR or the content of B.E. Tech's responses. Petitioners' limited role ensures that Facebook and B.E. Tech will not suffer any additional costs. Facebook will not be obligated to cooperate with Petitioners. Likewise, B.E. Tech will not have to coordinate with or respond to arguments by more parties than they already do.

Moreover, a final written decision on the validity of the '314 patent will minimize issues in the Underlying Litigation and potentially resolve the Litigation altogether thereby promoting the efficient determination of validity. If the Board permits Petitioners to join the Facebook IPR, and the '314 patent is upheld in a final decision, Petitioners will be estopped from further challenging the validity of the patent on these grounds, avoiding duplication of B.E. Tech's efforts at least as to Petitioners. *See* 35 U.S.C. § 315(e)(1). Accordingly, to avoid duplicate efforts and promote efficiency, joinder is appropriate.

b. No New Arguments Are Presented.

The petition asserts, verbatim, only the arguments that the Board has already instituted in the Facebook IPR. Thus, there are no new arguments to consider. Further, the Petition relies on the expert witness, Stephen Gray, who is already involved in Facebook's IPR. Thus, no new expert depositions are required.

c. No Schedule Adjustments Are Necessary.

Joinder in this case will not impact the Board's ability to complete its review in a timely manner. Section 316(a)(11) provides that IPR proceedings should be completed and the Board's final decision issued within one year of institution of the review. *See also* 37 C.F.R. § 42.100(c). Here, joinder will not affect the Board's ability to issue its final determination within one year because Petitioners agree to an understudy role and do not raise any issues that are not already before the Board. Indeed, the Petition includes only those grounds on which the IPR was instituted, and the invalidity grounds were copied verbatim from Facebook's petition. Given that Petitioners will assume an understudy role, their presence will not introduce any additional arguments, briefing, or need for discovery.

Petitioners submit that B.E. Tech does not need to file a Patent Owner's Preliminary Response, and request that the Board proceed without it. This is consistent with the Board's Order IPR2013-00256 (Paper No. 8), which allowed the Patent Owner to file a preliminary response addressing only those points raised in the new petition that were different from those in the granted petition. Here, because the invalidity grounds are word-for-word identical to those allowed grounds in Facebook's Petition, there is nothing new for B.E. Tech to address. Moreover, B.E. Tech did not file a Preliminary Response to Facebook's petition or any of the other four petitions filed against the '314 Patent. Alternatively, the

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