UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TWITTER, INC. AND YELP INC.
Petitioners

v.

EVOLUTIONARY INTELLIGENCE, LLC

Patent Owner

Patent No. 7,010,536

Filing Date: January 28, 1999

Issue Date: March 7, 2006

Title: SYSTEM AND METHOD FOR CREATING AND MANIPULATING INFORMATION CONTAINERS WITH DYNAMIC REGISTERS

Inter Partes Review No. Unassigned

MOTION FOR JOINDER
UNDER 37 C.F.R. §§ 42.22 AND 42.122(b)

Twitter, Inc. and Yelp Inc. ("Petitioners") submit concurrently herewith a Petition for *Inter Partes* Review of U.S. Patent No. 7,010,536 ("Petition") based on grounds identical to those that formed the basis for pending IPR proceeding *Apple Inc. v. Evolutionary Intelligence, LLC*, IPR2014-00086 ("the Apple IPR"). Pursuant to 35 U.S.C. § 315(c), Petitioners respectfully move that their Petition be instituted and joined with the Apple IPR.[1] Petitioners do not seek to alter the grounds upon which the Board has already found support in instituting the Apple IPR, and joinder will have no impact on the existing schedule in the joined IPRs.

Petitioners submit that joinder is appropriate because it will promote efficient resolution of the issues without affecting scheduling for the pending proceeding and will not prejudice the parties to the Apple IPR. Absent joinder, Petitioners may be prejudiced as they have a significant interest in the underlying validity determination at issue in this proceeding, given the potential impact on litigation proceedings between Evolutionary Intelligence and Petitioners involving the same patent. Joinder would protect Petitioners' interests and avoid the potential prejudice to Petitioners that could result from a settlement between Evolutionary Intelligence and Apple.

[1] As stated in the Frequently Asked Questions section of the Patent Trial and Appeal Board's website (http://www.uspto.gov/ip/boards/bpai/prps.jsp), "No prior authorization is required for filing the motion for joinder with the petition."

Petitioners' motion for joinder and accompanying Petition are timely under 37 C.F.R. §§ 42.22 and 42.122(b), as they are submitted within one month of April 25, 2014, the date that the Apple IPR was instituted.

I. Background and Related Proceedings

Evolutionary Intelligence LLC ("Evolutionary Intelligence") is the owner of U.S. Patent No. 7,010,536 ("the '536 patent") and related U.S. Patent No. 7,702,682 ("the '682 patent"). In October 2012, in nine separate lawsuits[2], Evolutionary Intelligence sued Petitioners, Apple, and several other entities for infringement of the '536 patent and '682 patent (the "Underlying Litigations").

On October 22 and 23, 2013, Apple Inc. ("Apple"), Facebook, Inc., and Petitioners filed eight petitions for *inter partes* review which collectively covered all claims of the '536 patent and '682 patent. In December 2013 and January 2014, all nine suits in the Underlying Litigations were stayed pending the outcome of the eight petitions for *inter partes* review. On April 25, 2014, the Board instituted trial

[2] *Evolutionary Intelligence LLC v. Yelp Inc.*, Civil Action No. 4:13-cv-03587 (DMR) (N.D. Cal.); *Evolutionary Intelligence LLC v. Twitter, Inc.*, Case No. 5:13-cv-04207-JSW(N.D. Cal.); *Evolutionary Intelligence LLC v. Apple Inc.*, Case No. 3:13-cv-04201-JD (N.D. Cal.); *Evolutionary Intelligence LLC v. Facebook, Inc.*, Case No. 3:13-cv-04202-JSC (N.D. Cal.); *Evolutionary Intelligence LLC v. FourSquare Labs, Inc.*, Case No. 3:13-cv-04203-EDL (N.D. Cal.); *Evolutionary Intelligence LLC v. Groupon, Inc.*, Case No. 3:13-cv-04204-LB (N.D. Cal.); *Evolutionary Intelligence LLC v. LivingSocial, Inc.*, Case No. 3:13-cv-04205-EDL (N.D. Cal.); *Evolutionary Intelligence LLC v. Millennial Media, Inc.*, Case No. 5:13-cv-04206-HRL (N.D. Cal.); *Evolutionary Intelligence LLC v. Sprint Nextel Corporation et al,* Case No. 5:13-cv-04513-RMW (N.D. Cal.)

on claims 2-12, 14 and 16 of the '536 patent in the Apple IPR, and, on April 25 and 28, 2014, the Board declined to institute the remainder of Apple's, Facebook's and Petitioners' *inter partes* review petitions.

II. This Joinder Motion and the Petition are Timely

The Petition and the instant motion for joinder are timely under 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.22, and 42.122(b), as they are being submitted within one month of the date that the Apple IPR was instituted. Rule 42.122 states that a motion for joinder shall be filed no later than one month after the granting of the petition that is sought to be joined. Apple's petition was granted on April 25, 2014. *See* IPR2014-00086, Paper 8. The Petition, filed on May 23, 2014, was filed less than one month from the granting of Apple's IPR.

Further, the Petition is not subject to the one-year time bar of Section 315(b) and Rule 42.101(b). Pursuant to Section 315(b), the one-year bar "shall not apply to a request for joinder under subsection (c)." *See* 35 U.S.C. §§ 315(b), 315(c); *see also Dell Inc. v. Network-1 Security Solutions, Inc.*, IPR2013-00385, Paper 17 at 4-5. Similarly, Rule 42.101(b), which provides that a petition for *inter partes* review may not be "filed more than one year after the date on which the petitioner…is served with a complaint alleging infringement of the patent," "shall not apply," pursuant to Rule 42.122(b), "when the petition is accompanied by a request for Joinder." *See* 37 C.F.R. §§ 42.101(b), 42.122(b); *see also Microsoft Corp. v.*

Proxyconn, Inc., IPR2013-00109, Paper 15 (granting joinder beyond the one-year window).

III. Joinder will not impact the Board's ability to complete the review within the one-year period

Joinder in this case will not impact the Board's ability to complete its review in a timely manner. 35 U.S.C. § 316(a)(11) and 37 C.F.R. § 42.100(c) provide that *inter partes* review proceedings should be completed and the Board's final decision issued within one year of institution of the review. The same provisions provide the Board with flexibility to extend the one-year period by up to six months for good cause, or in the case of joinder. *Id*. In this case, joinder should not affect the Board's ability to issue its final determination within one year because Petitioners do not raise any issues that are not already before the Board.

As long as Apple remains in the Apple IPR, Petitioners will coordinate their approach and filings with Apple. In the event that Apple settles, Petitioners will be well positioned to continue participating in this proceeding without any delay.

Furthermore, the Petition is based only on the grounds on which the Board granted the Apple IPR, for which joinder is requested. Petitioners submit that Evolutionary Intelligence does not need to file a new Patent Owner's Preliminary Response in this instance because the invalidity grounds are identical to those grounds raised in the petition for the Apple IPR. Evolutionary Intelligence already submitted a Patent Owner's Preliminary Response, which the Panel has already

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