

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TWITTER, INC. AND YELP INC.
Petitioner

v.

EVOLUTIONARY INTELLIGENCE, LLC
Patent Owner

Case IPR2014-00812
Case IPR2014-00086
Patent 7,101,536

Before, KALYAN K. DESHPANDE, TREVOR M. JEFFERSON,
BRIAN J. McNAMARA, NEIL T. POWELL, and
GREGG I. ANDERSON, *Administrative Patent Judges*.

McNAMARA, *Administrative Patent Judge*.

DECISION GRANTING
MOTION FOR JOINDER
37 C.F.R. § 42.122(b)

BACKGROUND

On May 23, 2014, Twitter, Inc. (“Twitter”) and Yelp Inc. (“Yelp”) (collectively “Petitioner”) petitioned for *inter partes* review of claims 2-14 and 16 of U.S. Patent No. 7,101,536 (“the ’536 Patent”) pursuant to 35 U.S.C. § 311 et seq. Papers 1, 8 (“Petition”). Petitioner also timely moved for joinder with *Apple Inc. v. Evolutionary Intelligence LLC*, IPR2014-00086 (“the Apple IPR”). Paper 4 (“Motion For Joinder”). In a separate order entered today, we granted the Petition on the same grounds as those on which we instituted trial in the Apple IPR.¹ As discussed below, joining Twitter and Yelp as petitioners in IPR2014-00086 will not delay the schedule or unduly complicate that proceeding. Therefore, we grant Petitioner’s Motion For Joinder.

On June 3, 2014, we conducted a teleconference with counsel for Petitioner and Evolutionary Intelligence LLC. (“Patent Owner”). During that teleconference, Petitioner’s counsel confirmed that its challenges to claims 2-12, 14 and 16 of the ’536 Patent in this proceeding are the same as those presented in the Apple IPR on which we instituted a trial. Petitioner’s counsel also agreed to withdraw its challenge to claim 13 on which we did not institute a trial in the Apple IPR. Thus, the challenges asserted in IPR2014-00086 and IPR2014-00812 are identical.

During the teleconference, we also discussed procedural matters related to Petitioner’s Motion For Joinder. Petitioner agreed that joinder required no changes to Scheduling Order in IPR2014-00084, Paper 9.

Because the grounds of unpatentability in the Apple IPR and the present proceeding are the same, during the call, the petitioners (Apple and collectively, Twitter and Yelp) agreed that the case is amenable to consolidated filings. Apple

¹ We instituted trial on challenges to claims 2-12, 14 and 16 as anticipated under 35 U.S.C. § 102(e) by U.S. Patent 5,836,529 to Gibbs, et. al. We did not institute a trial in either proceeding based on challenges to claim 13.

will be responsible for the consolidated filing. Any separate filing by the petitioners in the joined proceeding is limited to a single paper, filed by Twitter and Yelp, the collective Petitioner in this proceeding, of no more than seven pages directed only to points of disagreement with Apple. As the collective Petitioner in this proceeding, Twitter and Yelp are not permitted any individual filings and are not permitted any argument in furtherance of those advanced by Apple. Patent Owner is permitted a corresponding number of pages to respond separately to filings made collectively by Twitter and Yelp.

In IPR2014-00086, Apple cites the testimony of Dr. Henry Houh. Twitter and Yelp, the collective Petitioner in this proceeding, also cite the testimony of Dr. Henry Houh. During the teleconference, it was agreed that Dr. Houh would be subject to a single cross examination in the joined proceeding, and not separately in each proceeding. Counsel representing Twitter and Yelp, collectively, and counsel representing Apple stated that they would work together to manage depositions of Patent Owner's witnesses within ordinary time limits. At this time, there are no proposals to extend the allotted deposition times for cross examination or redirect.

In view of these circumstances, during the teleconference, Patent Owner stated that it does not oppose the joinder and has filed no opposition to the Motion For Joinder. Apple also does not oppose the joinder.

ORDER

Accordingly, it is:

ORDERED that IPR2014-00812 and IPR2014-00086 are joined;

FURTHER ORDERED that the grounds on which IPR2014-00086 was instituted are unchanged;

FURTHER ORDERED the Scheduling Order in place for IPR2014-00086 is unchanged;

FURTHER ORDERED that throughout this proceeding, Apple, and Twitter and Yelp collectively, will file papers, except for motions which do not involve another party, as consolidated filings. Apple will identify each such filing as a consolidated filing and will be responsible for completing all consolidated filings. Twitter and Yelp collectively, may file an additional paper, not to exceed seven pages, which may address only points of disagreement with points asserted in Apple's consolidated filings. Any such filing by Twitter and Yelp collectively, must specifically identify and explain each point of disagreement. Twitter and Yelp may not file arguments in support of points made in Apple's consolidated filing;

FURTHER ORDERED that, in response to any consolidated filing, Patent Owner may respond separately to any separate paper filed collectively by Twitter and Yelp. Any such separate response may not exceed the number of pages in the separate paper filed collectively by Twitter and Yelp and is limited to issues raised in that paper;

FURTHER ORDERED that Patent Owner will conduct cross examination of any witnesses, as well as the redirect of any witness Patent Owner produces, in the joined proceeding within the timeframe normally allotted by the rules;

FURTHER ORDERED that Apple and Twitter and Yelp, collectively, will designate attorneys to conduct the cross-examination of any witness produced by Patent Owner and the redirect of any witness produced by Apple or Twitter and Yelp, within the timeframe normally allotted by the rules for one party. Apple and Twitter and Yelp, collectively, will not receive any separate cross-examination or redirect time;

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FURTHER ORDERED that any requests by any party for additional deposition time must be brought before the Board;

FURTHER ORDERED that this proceeding (IPR2014-00821) is terminated under 37 C.F.R. § 42.72 and all further filings in the joined proceeding shall be made in IPR2014-00086; and

FURTHER ORDERED that the case caption in IPR2014-00086 shall be changed to reflect joinder with this proceeding in accordance with the attached example.

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