

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RELOADED GAMES, INC.,
Petitioner,

v.

PARALLEL NETWORKS LLC,
Patent Owner.

Case IPR2014-00950
Patent 7,188,145 B2

Before KRISTEN L. DROESCH, BRIAN J. McNAMARA, and
HYUN J. JUNG, *Administrative Patent Judges*.

JUNG, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Motion for Joinder
and Denying Institution of *Inter Partes* Review
37 C.F.R. §§ 42.108, 42.122

I. INTRODUCTION

Reloaded Games, Inc. ("Petitioner") filed a Petition (Paper 1, "Pet." or "Second Petition") to institute an *inter partes* review of claims 1, 4, 5, 8, 9, 11–15, 18, 19, 22, 23, and 25–28 ("the challenged claims") of U.S. Patent No. 7,188,145 B2 (Ex. 1001, "the '145 patent") pursuant to 35 U.S.C. § 311.

The Second Petition involves the same parties and patent at issue in instituted trial proceeding, *Reloaded Games, Inc. v. Parallel Networks LLC*, Case No. IPR2014-00136 (“the ’136 proceeding”). Petitioner concurrently filed a Motion for Joinder of the Second Petition with the ’136 proceeding. Paper 4 (“Mot.”). The Motion was filed within one month after institution of the ’136 proceeding, as required by 37 C.F.R. § 42.122(b).

Parallel Networks LLC (“Patent Owner”) filed a Preliminary Response (Paper 10, “Prelim. Resp.”) and an Opposition to Motion for Joinder (Paper 11, “Opp.”). We have jurisdiction under 35 U.S.C. § 314.

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides:

THRESHOLD.—The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

35 U.S.C. § 315(b) bars institution of *inter partes* review when the petition is filed more than one year after the petitioner (or petitioner’s real party in interest or privy) is served with a complaint alleging infringement of the patent. 35 U.S.C. § 315(b); 37 C.F.R. § 42.101(b). The one-year bar, however, does not apply to a request for joinder. 35 U.S.C. § 315(b) (final sentence); 37 C.F.R. § 42.122(b). The record indicates that Petitioner was served with a complaint asserting infringement of the ’145 patent more than one year before filing the Second Petition. Thus, absent joinder, the Second Petition would be barred.

Joinder may be authorized when warranted, but the decision to grant joinder is discretionary. 35 U.S.C. § 315(c); 37 C.F.R. § 42.122(b). When exercising that discretion, the Board is mindful that patent trial regulations, including the rules for joinder, must be construed to secure the just, speedy, and inexpensive resolution of every proceeding. 37 C.F.R. § 42.1(b).

The Board determines whether to grant joinder on a case-by-case basis, taking into account the particular facts of each case. *See* 157 Cong. Rec. S1376 (daily ed. Mar. 8, 2011) (statement of Sen. Kyl) (when determining whether and when to allow joinder, the Office may consider factors including the breadth or unusualness of the claim scope, claim construction issues, and consent of the patent owner). After considering the facts of this case, we determine that Petitioner’s stated reasons for allowing joinder do not outweigh meaningful reasons for denying joinder.

II. ANALYSIS

Petitioner states that its request for joinder is “substantively appropriate under the circumstances” because “the Second Petition involves the same parties,” “raises a limited number of additional issues,” “will not complicate the proceeding in IPR2014-00136,” and “is directed to issues that will already be resolved in IPR2014-00136.” Mot. 5–6. Petitioner also states it is “willing to forfeit a reasonable portion of its response period in the Second Petition” and “will agree to one set of briefing for all of its papers, including the associated page limits in IPR2014-00136.” *Id.* at 6–7. Petitioner further contends that “discovery will be simplified because

Petitioner relies on the same expert declaration in both proceedings.” *Id.* at 7.

Patent Owner counters that the Second Petition is a responsive pleading that gains additional pages of argument and contains arguments that could have been raised in the Petition for the ‘136 proceeding. Opp. 5–6, 8. Patent Owner also argues that, if Petitioner’s Motion for Joinder is granted, it would set a precedent for a “single petitioner . . . , through abuse of the joinder rule, to seek advantage and circumvent the rules by staging petitions that attack the same claims through the filing of serial sixty page petitions,” which is “clearly not the intent of the joinder provision.” *Id.* at 6. Patent Owner further argues that “Petitioner has not provided any reason as to why it could not have asserted the allegations of the ‘950 Petition in the ‘136 Petition” and “provided no justification for failing to have included the allegations of the ‘950 Petition when it filed the ‘136 Petition.” *Id.* at 7, *see also id.* at 8, 9–13 (presenting similar arguments). Patent Owner contends that “Petitioner seeks a ‘second bite of the apple’ and alleges for the first time that claims 1, 5, 8-9, 11-15, 19, 22-23, and 25-28 are obvious under § 103 over Smith in view of Inohara” that “complicate the proceedings of the ‘136 IPR by raising new arguments that could and should have been raised in the ‘136 Petition.” *Id.* at 11. Patent Owner also contends that “[i]t would be counter to the rules that govern *inter partes* review proceedings and procedurally unfair to grant the ‘950 Petition or joinder to the ‘136 IPR.” *Id.* at 12.

We agree with Patent Owner’s contentions as to the Petition in this case. In particular, we agree that “Petitioner seeks a ‘second bite of the apple.” Opp. 11. We also agree with Patent Owner that “Petitioner has not

raised any grounds of unpatentability that could not have been raised when filing the ‘136 Petition.” *Id.* at 13. Petitioner acknowledges that “[t]he Second Petition merely adds citations to [Smith and Inohara] necessary to meet the additional recitations of claims 1, 5, 8, 9, 11-15, 19, 22, 23 and 25-28.” Mot. 5. Petitioner’s Motion for Joinder does not explain why those citations could not have been added to the prior Petition of the ’136 proceeding. On the facts of this case, we are not persuaded to exercise our discretion to join these matters.

Petitioner states that it “has included these claims, arguing grounds of obviousness for these claims, in part based on the Board’s claim interpretation of the term ‘allowing’ in its IPR2014-00136 Institution Decision.” Mot. 5. However, the Board’s construction of “allowing” is based on its plain and ordinary meaning based on a dictionary definition, not a difficult to foresee special definition. *See* IPR2014-00136, Paper 15, at 13–15.

In view of the foregoing, on the record before us, Petitioner has not shown that joinder is justified.

III. CONCLUSION

The Motion for Joinder is denied, and therefore, the Second Petition is denied because it was not filed within the time limits imposed under 35 U.S.C. § 315(b).

IV. ORDER

For the reasons given, it is

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