

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE GILLETTE COMPANY,

Petitioner

v. ZOND, INC.,

Patent Owner

Case IPR2014-00984

U.S. PATENT NO. 7,147,759

CLAIMS 2, 3, 5-9, 13-16, 19, 41-43 and 45

Title: High-Power Pulsed Magnetron Sputtering

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

I. INTRODUCTION

The Gillette Company and Procter & Gamble, Inc. (collectively, “Gillette”) filed the present petition for *inter partes* review **IPR2014-00984** (the “Gillette IPR”), and moves for joinder of the Gillette IPR with **IPR2014-01087** (the “GlobalFoundries IPR”), filed by GlobalFoundries U.S., Inc., GlobalFoundries Dresden Module One LLC & Co. KG, GlobalFoundries Dresden Module Two LLC & Co. KG. (“GlobalFoundries”). The Gillette IPR is identical to the GlobalFoundries IPR in all substantive respects, includes identical exhibits, and relies upon the same expert declarant. GlobalFoundries does not oppose this motion.

II. BACKGROUND AND RELATED PROCEEDINGS

The Gillette IPR and GlobalFoundries IPR are among a family of *inter partes* review proceedings relating to patents that are being asserted by Zond against numerous defendants in the District of Massachusetts: 1:13-cv-11570-RGS (*Zond v. Intel Corp.*); 1:13-cv-11577-LTS (*Zond v. AMD, Inc., et al.*); 1:13-cv-11581-DJC (*Zond v. Toshiba Am. Elec. Comp. Inc.*); 1:13-cv-11625-NMG (*Zond v. Renesas Elec. Corp.*); 1:13-cv-11634-WGY (*Zond v. Fujitsu Semiconductor Ltd., et al. and Taiwan Semiconductor Mfg. Co.*); and 1:13-cv-11567-DJC (*Zond v. The Gillette Co., et al.*).

In particular, a first complaint against GlobalFoundries in 1:13-cv-11577-LTS (*Zond v. AMD*) was filed on July 2, 2013, and a first complaint in 1:13-cv-11567-DJC (*Zond v. Gillette*) was served on Gillette on July 2, 2013. In its complaint, Zond alleges Gillette infringes ten of Zond's patents, seven of which overlap with the seven patents Zond alleges GlobalFoundries of infringing, namely, U.S. Patent No. 6,805,779 B2, U.S. Patent No. 6,806,652 B1, U.S. Patent No. 6,853,142 B2, U.S. Patent No. 7,147,759 B2, U.S. Patent No. 7,604,716 B2, U.S. Patent No. 7,808,184 B2, U.S. Patent No. 7,811,421 B2 (the "Overlapping Patents").¹

Currently, *inter partes* review petitions relating to the Overlapping Patents, are pending, involving GlobalFoundries, Gillette, and the other defendants in the District of Massachusetts litigations. All petitions for *inter partes* review that have been filed by GlobalFoundries and Gillette are timely as prescribed by 35 U.S.C. § 315(b).

¹ Gillette also has filed petitions for an *inter partes* review of the three additional patents asserted by Zond against Gillette. See IPR2014-00477 and IPR2014-00479 (U.S. Patent No. 8,125,155); IPR2014-00580 and IPR2014-00726 (U.S. Patent No. 6,896,773); and IPR2014-00578 and IPR2014-00604 (U.S. Patent No. 6,896,775). Gillette does not seek joinder of these petitions.

In addition to this motion, Gillette is moving for joinder of each of its Zond IPR petitions with the corresponding petitions filed by GlobalFoundries as listed in the Appendix, subject to the same conditions sought by this motion.

GlobalFoundries does not oppose the Gillette motions.

In its May 29, 2014 Order (Paper 5) in IPR2014-00781 and IPR2014-00782, the Board stated that prior authorization for filing a motion for joinder is not required if sought within one month of the institution date of any *inter partes* review for which joinder is requested. *See* 37 C.F.R. § 42.122(b). Inasmuch as the GlobalFoundries IPR has not yet been instituted, this motion is, therefore, timely.

Since the May 29, 2014 Order, petitioners Intel, Gillette, TSMC, Fujitsu Semiconductor Ltd (“Fujitsu”), GlobalFoundries, Inc. (“GlobalFoundries”) AMD, Inc. (“AMD”), Renesas Elec. Corp. (“Renesas”) and Toshiba Am. Elec. Comp. Inc. (“Toshiba”) have completed their filings of substantially the same IPR petitions as the GlobalFoundries IPR petitions, including the GlobalFoundries IPR. A conference call with the Board was held on Monday, August 4, 2014 to discuss TSMC’s pending motion. The Board issued an order on August 5, 2014 (Paper 13, Case IPR2014-00443), requesting all petitioners to file motions for joinder within 10 days of the order. Gillette subsequently filed a motion for joinder with a corresponding Intel IPR. Intel subsequently terminated its corresponding IPR

proceeding. On Tuesday, September 16, 2014, the Board issued a subsequent paper requesting renewed joinder motions within five business days.

III. DISCUSSION

If the Director institutes an *inter partes* review on the GlobalFoundries IPR, Gillette respectfully requests that the Board exercise its discretion to grant joinder of the Gillette IPR pursuant to 35 U.S.C. § 315(c), 37 C.F.R. § 42.22, and 37 C.F.R. § 42.122(b). In support of this motion, Gillette proposes consolidated filings and other procedural accommodations designed to streamline the proceedings.

A. Reasons Why Joinder Is Appropriate

Joinder is appropriate because it is the most expedient way to secure the just, speedy and inexpensive resolution of the related proceedings. *See* 35 U.S.C. § 316(b); 37 C.F.R. § 42.1(b). The Gillette IPR is substantively identical to the corresponding GlobalFoundries IPR in an effort to avoid multiplication of issues before the Board. Given the duplicative nature of these petitions, joinder of the related proceedings is appropriate. Further, Gillette agrees to consolidated filings and discovery.

1. Substantively Identical Petitions

Gillette represents that the Gillette IPR is identical to the GlobalFoundries IPR in all substantive respects. It includes identical grounds, analysis, and exhibits and

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