

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE GILLETTE COMPANY,

Petitioner

v. ZOND, INC.,

Patent Owner

Case IPR2014-00986

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

CLAIMS 22-33, 37, 46, 48, and 50

Title: High-Power Pulsed Magnetron Sputtering

PETITIONER'S 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 Proctor & Gamble, Inc. (collectively, “Gillette”) filed the present petition for *inter partes* review **IPR2014-00986** (the “Gillette IPR”), and moves for joinder of the Gillette IPR with **IPR2014-00446** (“the Intel IPR”), filed by Intel Corporation (“Intel”). The Gillette IPR is identical to the Intel IPR in all substantive respects, includes identical exhibits, and relies upon the same expert declarant. Intel does not oppose this motion.

II. BACKGROUND AND RELATED PROCEEDINGS

The Gillette IPR and Intel 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-DPW (*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 in 1:13-cv-11570-RGS (*Zond v. Intel*) was served on Intel on July 9, 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 Intel 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 Intel, Gillette, and the other defendants in the District of Massachusetts litigations. All petitions for *inter partes* review that have been filed by Intel and Gillette are timely as prescribed by 35 U.S.C. § 315(b).

In addition to this motion, Gillette is moving for joinder of each of its Zond IPR petitions with the corresponding petitions first filed by Intel, subject to the same conditions sought by this motion. Intel 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

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.

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. § 42.422(b). Inasmuch as the Intel 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 Intel IPR petitions, including the Intel IPR. The Appendix contains a list of all IPR petitions for the Overlapping Patents. 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.

III. DISCUSSION

If the Director institutes an *inter partes* review on the Intel 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 Intel 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 Intel IPR in all substantive respects. It includes identical grounds, analysis, and exhibits and relies upon the same expert declarant and declaration. Accordingly, if instituted, maintaining the Gillette IPR proceeding separate from that of Intel would entail needless duplication of effort.

2. Consolidated Filings and Discovery

Because the grounds of unpatentability in the Gillette IPR and Intel IPR are the same, the case is amenable to consolidated filings. Gillette agrees to consolidated filings for all substantive papers (*e.g.*, Reply to the Patent Owner's Response, Opposition to Motion to Amend, Motion for Observation on Cross

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