

Paper No. ___

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE GILLETTE COMPANY,

Petitioner

v. ZOND, INC.,

Patent Owner

Case IPR2014-00990

U.S. PATENT NO. 7,811,421

CLAIMS 3-7, 18-20, 31, 32, 36, 40, 41, 44 and 45

Title: High Deposition Rate 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 **IPR2014-00990** (the “Gillette IPR”), and moves for joinder of the Gillette IPR with **IPR2014-00805** (the “TSMC IPR”), filed by Taiwan Semiconductor Manufacturing Company, LTD. and TSMC North America Corp. (“TSMC”). The Gillette IPR is identical to the TSMC IPR in all substantive respects, includes identical exhibits, and relies upon the same expert declarant. TSMC does not oppose this motion.

II. BACKGROUND AND RELATED PROCEEDINGS

The Gillette IPR and TSMC 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.*); 1:14-cv-12438-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-11634-WGY (*Zond v. Fujitsu*) was filed against TSMC on July 9, 2013, a second complaint in 1:14-cv-12438-WGY (*Zond v. Fujitsu*) was filed against TSMC on June 10, 2014, 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, nine of which overlap with the patents Zond alleges TSMC 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, U.S. Patent No. 6,896,773 B2 and U.S. Patent No. 6,896,775 B2. (the "Overlapping Patents").¹

Currently, *inter partes* review petitions are pending which relate to the Overlapping Patents and involve TSMC and Gillette. All petitions for *inter partes*

¹ Gillette also has filed two petitions for an *inter partes* review of an additional patent asserted by Zond against Gillette. See IPR2014-00477 and IPR2014-00479 (U.S. Patent No. 8,125,155). Gillette does not seek joinder of these petitions, nor does it seek joinder of its IPR2014-00580 and IPR2014-00726 (U.S. Patent No. 6,896,773 B2) petitions or its IPR2014-00578 and IPR2014-00604 (U.S. Patent No. 6,896,775 B2) petitions with TSMC's corresponding petitions.

review that have been filed by TSMC 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 TSMC², subject to the same conditions sought by this motion. TSMC 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 TSMC 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 TSMC IPR petitions, including the TSMC 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),

² The Appendix contains a list of these petitions.

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 TSMC 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 TSMC 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.

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