

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG ELECTRONICS, INC.,
Petitioner,

v.

INNOVATIVE DISPLAY TECHNOLOGIES LLC,
Patent Owner.

Case IPR2015-00493
Patent No. 7,537,370

Before LORA M. GREEN, THOMAS L. GIANNETTI,
and MICHELLE N. WORMMEESTER, *Administrative Patent Judges*.

WORMMEESTER, *Administrative Patent Judge*.

DECISION

Institution of *Inter Partes* Review
37 C.F.R. § 42.108

Grant of Motion for Joinder
37 C.F.R. § 42.122(b)

I. INTRODUCTION

LG Electronics, Inc. (“Petitioner”) filed a Petition pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of claims 1, 4, 8, 13, 15, 27, 29, and 47 of U.S. Patent No. 7,537,370 (“the ’370 patent”). Paper 2 (“Pet.”). Concurrently, Petitioner filed a Motion for Joinder. Paper 3 (“Joinder Motion”). The Joinder Motion seeks to join this proceeding with *LG Display Co., Ltd. v. Innovative Display Technologies LLC*, Case IPR2014-01096 (“the ’1096 IPR”), which concerns the ’370 patent at issue here. Joinder Motion 1.

Innovative Display Technologies LLC (“Patent Owner”) filed a Preliminary Response (Paper 8, “Prelim. Resp.”) as well as an opposition to the Joinder Motion (Paper 7, “Opposition”). We instituted trial in the ’1096 IPR on January 13, 2015. ’1096 IPR, Paper 11 (“the ’1096 Institution Decision”). For the reasons described below, we institute an *inter partes* review of claims 15 and 27 and grant Petitioner’s Motion for Joinder.

II. INSTITUTION OF *INTER PARTES* REVIEW

A. References

Petitioner relies on the same references as those in the ’1096 IPR¹:

Pristash	US 5,005,108	Apr. 2, 1991	Ex. 1006
Ohe	EP 0 500 960 A1	Feb. 9, 1992	Ex. 1007
Kobayashi	US 5,408,388	Apr. 18, 1995	Ex. 1008

Petitioner also relies on the same Declaration of Michael J. Escuti, Ph.D., as in the ’1096 IPR. (“Escuti Decl.”). Ex. 1004.

¹ As in the ’1096 IPR, Petitioner here also states that it is relying on Admitted Prior Art from the ’370 patent specification. Pet. 7–8.

B. Grounds Asserted

The Petition in this proceeding asserts the same grounds as those on which we instituted review in the '1096 IPR. Those are:

References	Basis	Claims Challenged
Pristash	§ 103(a) ²	15 and 27
Kobayashi and Pristash	§ 103(a)	15 and 27

C. Real Parties-in-Interest

Patent Owner contends that the Petition should be denied because Petitioner has failed to name two real parties-in-interest. Prelim. Resp. 31. They are LG Display Co., Ltd., and LG Display America, Inc. *Id.*

Patent Owner made a similar assertion in the '1096 IPR with respect to Petitioner.³ For the reasons stated in the '1096 IPR Institution Decision (Paper 11), we conclude that Patent Owner's preliminary response fails to provide convincing evidence that LG Display Co., Ltd. and LG Display America, Inc., are real parties-in-interest here.

E. Decision

In view of the identity of the challenges to the '370 patent in this Petition and in the petition in the '1096 IPR, we institute an *inter partes*

² In the '1096 IPR, we stated that we were instituting review based on two grounds of alleged unpatentability, including *anticipation* of claims 15 and 27 by Pristash. '1096 IPR, Paper 11, 17. This statement was an error. As was clear from our analysis, our institution was instead based on alleged *obviousness* of claims 15 and 27 over Pristash. *See id.* at 8–10.

³ In the '1096 IPR, Patent Owner contended that the Petitioner here, LG Electronics, Inc., should have been named as a real party-in-interest, along with LG Electronics U.S.A., Inc. '1096 IPR, Paper 9, 18.

review in this proceeding on the same grounds as those on which we instituted *inter partes* review in the '1096 IPR.

We do not institute *inter partes* review on any other grounds.

III. MOTION FOR JOINDER

An *inter partes* review may be joined with another *inter partes* review, subject to the provisions of 35 U.S.C. § 315(c):

(c) JOINDER.—If the Director institutes an *inter partes* review, the Director, in his or her discretion, may join as a party to that *inter partes* review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an *inter partes* review under section 314.

As the moving party, Petitioner bears the burden of proving that it is entitled to the requested relief. 37 C.F.R. § 42.20(c).

To be considered timely, a motion for joinder must be filed no later than one month after the institution date of the *inter partes* review for which joinder is requested. 37 C.F.R. § 42.122(b). The Petition in this proceeding has been accorded a filing date of December 29, 2014 (Paper 6). This date is before the date of institution in the '1096 IPR, which was instituted on January 13, 2015. The Petition, therefore, is timely.

A motion for joinder should: (1) set forth the reasons joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; and (3) explain what impact (if any) joinder would have on the trial schedule for the existing review. See Frequently Asked Question H5, <http://www.uspto.gov/patents-application-process/appealing-patent->

decisions/trials/patent-review-processing-system-prps-0#heading-13 (last visited June 30, 2015).

Petitioner contends joinder will not impact the Board's ability to complete its review in the statutorily prescribed time frame. Joinder Motion 5. Petitioner contends that the grounds asserted in this Petition are the same grounds of unpatentability asserted in the '1096 IPR. *Id.* Petitioner's arguments regarding the asserted references are identical to the arguments raised in the '1096 IPR, and Petitioner has submitted, in support of its petition, the same declaration of the technical expert submitted in the '1096 IPR (excluding some minor changes made to reflect Petitioner's engagement of the same expert). *Id.*

Petitioner further contends that joinder will promote efficiency by avoiding duplicative filings and reviews of the same issues in multiple proceedings. Joinder Motion 6.

Petitioner further asserts joinder will not prejudice the parties to the '1096 IPR because the scope and timing of that proceeding should remain the same. Joinder Motion 1. According to Petitioner, the Board can minimize any scheduling impact by requiring consolidated filings and coordination among petitioners. *Id.* at 1–2.

Patent Owner opposes joinder, contending that Petitioner argues only that the grounds asserted in the instant Petition and the ones asserted in the '1096 IPR are identical, and has not provided any “independent” reasons why joinder is appropriate. Opposition 5–6.

As discussed above, joinder is a matter within the Board's discretion based on the particular circumstances of each proceeding. In this proceeding, we are persuaded that Petitioner has demonstrated that joinder

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.