

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

ARENDI S.A.R.L.,
Patent Owner.

Case No. To Be Assigned
Patent No. 7,917,843

**MOTION FOR JOINDER UNDER 35 U.S.C. § 315(C)
AND 37 C.F.R. §§ 42.22 AND 42.122(B)**

I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Petitioner Samsung Electronics Co., Ltd. (“Samsung” or “Petitioner”) respectfully requests joinder pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b) of the above-captioned *inter partes* review (“Samsung IPR”) with the pending *inter partes* review concerning the same patent captioned *Apple Inc., Google Inc., and Motorola Mobility LLC v. Arendi S.A.R.L.*, Case No. IPR2014-00208 (“Apple/Google IPR”), which was instituted on June 11, 2014 (Paper No. 8). Joinder is appropriate because it will promote efficient resolution of the validity of the involved patent, and it will not prejudice the parties to the Apple/Google IPR.

This Motion for Joinder is timely filed under 37 C.F.R. §§ 42.22 and 42.122(b) as it is submitted no later than one month after the June 11, 2014 institution date of the Apple/Google IPR.

II. STATEMENT OF MATERIAL FACTS

- a. On December 2, 2013, petitioners in the Apple/Google IPR requested *inter partes* review of claims 1-44 of U.S. Patent No. 7,917,843 (“the ‘843 patent”), citing four grounds of unpatentability.
- b. The Patent Owner (purported to be Arendi S.A.R.L.) submitted a preliminary response on March 12, 2014 (Paper No. 6).

- c. In a decision dated June 11, 2014 (Paper No. 8), the Board instituted *inter partes* review on one of the four requested grounds, *i.e.*, claims 1, 2, 8, 14-17, 20, 21, 23, 24, 30, 36-39, 42, and 43 as being rendered obvious under 35 U.S.C. § 103(a) by Pandit (U.S. Patent No. 5,859,636) (“the Pandit Ground”).
- d. The Samsung petition that accompanies the present Motion for Joinder includes only the single ground of unpatentability (the Pandit Ground) that was instituted in the Apple/Google IPR for the ‘843 patent.
- e. The claim charts in the Samsung petition that accompanies the present Motion for Joinder are substantially identical to the claim charts contained in the Apple/Google IPR petition for the Pandit Ground.
- f. The real parties-in-interest for the Samsung IPR were served with a complaint alleging infringement of the ‘843 patent more than one year prior to the date of filing the petition in the Samsung IPR.

III. STATEMENT OF REASONS FOR RELIEF REQUESTED

The Leahy-Smith America Invents Act (“AIA”) explicitly provides for joinder of *inter partes* review (“IPR”) proceedings. The statutory provision

governing joinder of *inter partes* review proceedings is 35 U.S.C. § 315(c) that reads as follows:

(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.

Although the AIA establishes a one-year bar from the date of service of a complaint alleging infringement for requesting *inter partes* review, the one-year bar does **not** apply to a request for joinder under Section 315(c). In particular, Section 315(b) reads as follows (emphasis added):

(b) PATENT OWNER'S ACTION.--An inter partes review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent. *The time limitation set forth in the preceding sentence shall not apply to a request for joinder under subsection (c).*

Further, in the case of joinder, the Board has the discretion to adjust the time period for issuing a final determination in an *inter partes* review. 35 U.S.C. § 316(a)(11); 37 C.F.R. § 42.100(c).

In exercising its discretion to grant joinder, the Board considers the impact of substantive and procedural issues on the proceedings, as well as other considerations, while being “mindful that patent trial regulations, including the rules for joinder, must be construed to secure the just, speedy, and inexpensive resolution of every proceeding.” *See Dell Inc. v. Network-1 Security Solutions, Inc.*, Case IPR2013-00385, Paper No. 17, July 29, 2013 at 3. The Board should “also take into account the policy preference for joining a party that does not present new issues that might complicate or delay an existing proceeding.” *Id.* at 10.¹ Under this framework, joinder of the Samsung IPR with the Apple/Google IPR is appropriate.

“A motion for joinder should: (1) set forth the reasons why joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the

¹ *Citing* 157 Cong. Rec. S1376 (daily ed. Mar. 8, 2011) (statement of Sen. Kyl) (“The Office anticipates that joinder will be allowed as of right - if an *inter partes* review is instituted on the basis of a petition, for example, a party that files an *identical petition* will be joined to that proceeding, and thus allowed to file its own briefs and make its own arguments.”) (emphasis added).

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