

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 IPR2015-00489
Patent No. 7,384,177 B2

Before THOMAS L. GIANNETTI, MIRIAM L. QUINN, and
BEVERLY M. BUNTING, *Administrative Patent Judges*.

GIANNETTI, *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 1–3, 5–7, 9, 10, 13–15, 19, 21, and 23–27 of U.S. Patent No. 7,384,177 (“the ’177 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 IPR2014-01362 (“the ’1362 IPR”), which concerns the ’177 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 ’1362 IPR on March 2, 2015. ’1362 IPR, Paper 12 (“’1362 Institution Decision”). For the reasons described below, we institute an *inter partes* review of all challenged claims 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 ’1362 IPR¹:

Melby	US 5,054,885	Oct. 8, 1991	Ex. 1006
Nakamura	US 5,453,855	Dec. 9, 1993	Ex. 1007
Baur	US 4,142,781	Mar. 6, 1979	Ex. 1008
Sasuga	US 5,432,626	Mar. 11, 1993	Ex. 1009
Pristash	US 5,005,108	Apr. 2, 1991	Ex. 1010
Farchmin	US 5,567,042	May 2, 1994	Ex. 1011

¹ The references are ordered by exhibit number with effective dates asserted by Petitioner. As in the ’1362 IPR, Petitioner here also states that it is relying on Admitted Prior Art from the ’177 patent specification. Pet. 9.

Petitioner also relies on the same Declaration of Michael J. Escuti, Ph.D., as in the '1362 IPR. (“Escuti Decl.”). Ex. 1004.

B. Grounds Asserted

The Petition in this proceeding asserts the same grounds as those on which we instituted review in the '1362 IPR. Those are:

References	Basis	Claims Challenged
Melby	§ 103(a)	1–3, 5–7, 9, 10, 13–15, 19, 21, 23–25, and 27
Nakamura	§ 102(e)	1, 2, 6, 7, 9, 10, 13–15, 19, 21, 23, 24, and 26

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. 25–26. They are LG Display Co., Ltd., and LG Display America, Inc. *Id.*

Patent Owner made a similar assertion in the '1362 IPR with respect to Petitioner.² For the reasons stated in the '1362 IPR Institution Decision, 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.

D. Statutory Bar Under 35 U.S.C. § 315(b)

Patent Owner also asserts that the Petition is barred under 35 U.S.C § 315(b). Prelim. Resp. 27. Patent Owner makes the argument that Petitioner is barred from filing the Petition because Petitioner is in privity

² In the '1362 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. '1362 IPR, Paper 8, 26.

with HP and Dell. *Id.* at 27–31. Patent Owner made a similar assertion in the '1362 IPR. We determined there that Patent Owner did not provide sufficient evidence of privity. '1362 Institution Decision 5.

For the reasons stated in the '1362 IPR Institution Decision, we determine that based on the evidence presented at this stage of the proceeding, Petitioner's showing of privity with HP and Dell is insufficient, and, therefore, 35 U.S.C. § 315(b) does not bar institution of *inter partes* review.

E. Decision

In view of the identity of the challenges to the '177 patent in this Petition and in the petition in the '1362 IPR, we institute an *inter partes* review in this proceeding on the same grounds as those on which we instituted *inter partes* review in the '1362 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 January 20, 2015 (Paper 6). This date is before the date of institution in the '1362 IPR, which was instituted on March 2, 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 July 2, 2015).

Petitioner contends joinder will not impact the Board's ability to complete its review in the statutorily prescribed time frame. Joinder Motion 6. Petitioner contends that the grounds asserted in this Petition are the same grounds of unpatentability asserted in the '1362 IPR. *Id.* Petitioner's arguments regarding the asserted references are identical to the arguments raised in the '1362 IPR, and Petitioner has submitted, in support of its petition, the same declaration of the technical expert submitted in the '1362 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 7.

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