

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. 6,323,853

**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 *Google Inc. and Motorola Mobility LLC v. Arendi S.A.R.L.*, Case No. IPR2014-00452 (“Google IPR”), which was instituted on August 20, 2014 (Paper No. 10). 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 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 August 20, 2014 institution date of the Google IPR.

II. STATEMENT OF MATERIAL FACTS

- a. On February 21, 2014, petitioners in the Google IPR requested *inter partes* review of claims 1-79 of U.S. Patent No. 6,323,853 (“the ‘853 patent”), citing three grounds of unpatentability.
- b. The Patent Owner (purported to be Arendi S.A.R.L. or “Arendi”) submitted a preliminary response on May 22, 2014 (Paper No. 8).

- c. In a decision dated August 20, 2014 (Paper No. 10), the Board instituted *inter partes* review on two of the three requested grounds, *i.e.*, claims 1–9, 11, 13–29, 38–45, 57–64, 66, 68–75, 77, and 79 as being rendered obvious under 35 U.S.C. § 103(a) by Goodhand (U.S. Patent No. 5,923,848) (“the Goodhand Ground”), and claims 6, 10, 12, 21, 27, 30–37, 42, 46–56, 61, 65, 67, 72, 76, and 78 as being rendered obvious under 35 U.S.C. § 103(a) by Goodhand and Padwick (U.S. Patent No. 5,923,848 and Gordon Padwick *et al.*, USING MICROSOFT OUTLOOK 97 (Que® Corporation 1997)) (“the Goodhand/Padwick Ground”).
- d. The Samsung petition that accompanies the present Motion for Joinder includes only the two grounds of unpatentability that were instituted in the Google IPR for the ‘853 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 Google IPR petition for the Goodhand Ground and Goodhand/Padwick Ground.

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).¹ In particular, Section 315(b) reads as follows (emphasis added):

¹ The one-year bar also should not apply to the Samsung IPR petition because the First Amended Complaint alleging infringement of the ’853 patent by Samsung was first filed and served on October 3, 2013. Prior to the First Amended Complaint, the ’853 patent was not asserted against Samsung.

(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

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