

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

T-MOBILE USA, INC. AND T-MOBILE US, INC.,
Petitioner

v.

MOBILE TELECOMMUNICATIONS TECHNOLOGIES, LLC,
Patent Owner

Case IPR2015-00018
Patent 5,659,891

PETITIONER'S REPLY IN SUPPORT OF ITS MOTION FOR JOINDER

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As set forth in Petitioner's Motion for Joinder ("Motion"), joinder will promote the efficient and consistent resolution of the validity of a single patent, will not prejudice the parties to the Apple IPR, and will eliminate duplicative filings and discovery as to the instituted grounds. Patent Owner Mobile Telecommunications Technologies, LLC, in its Opposition to the Motion ("Opposition"), however, attempts to argue against joinder of these close-in-time IPR proceedings that assert the same prior art. Patent Owner's arguments are without merit, as set forth below. Petitioner's Motion should be granted.

First, despite the proceedings being close in time to each other, Patent Owner argues that joinder supposedly would create an "impossible scheduling conflict," Opposition at 9-10. On the contrary, joinder will not impact the Board's ability to complete its review in a timely manner. As set forth in the Motion, Petitioner agrees to adopt procedures similar to those adopted in Case IPR2014-00556 to minimize any complication or delay caused by joinder. Patent Owner's suggestion that the schedule in the Apple IPR will be "substantially" impacted is without merit. *See* Opposition at 9-10. Contrary to Patent Owner's argument, the Board can institute the T-Mobile IPR on the Petrovic grounds and join the two proceedings without delay because Petitioner seeks to join on the identical grounds and virtually identical arguments already reviewed and instituted on by the Board in the Apple IPR.¹ Briefing on the Motion is now complete and the Board may act

¹ In its Opposition, Patent Owner argues that the two petitions have different claim construction arguments. Opposition at 7-8. Patent Owner's argument is moot

as soon as this month to institute the T-Mobile IPR on the Petrovic grounds and grant joinder to the Apple IPR.

Second, despite Apple and Petitioner reciting the same art and Petitioner's expert copying paragraphs from Apple's expert declaration verbatim, Patent Owner argues that there is no showing that Apple and Petitioner would work together, Opposition at 1-2. Patent Owner's argument is unavailing. By the inherent similarity of the proceedings, Petitioner will work together with Apple to prevent delay and promote efficiency. Further, as stated in Petitioner's Motion, Petitioner agrees to adopt procedures in which Apple and Petitioner will file consolidated filings with Apple being lead or responsible, allowing Petitioner up to seven additional pages for points of disagreement. Motion at 8. In addition, Petitioner will work together with Apple to manage questioning at depositions and

because the Board has already provided a preliminary claim construction in the Apple IPR. Patent Owner further argues that Petitioner's petition provides different wording for a single limitation of claim 1. *Id.* at 8. There is no requirement, nor does Patent Owner cite any, that petitions must be *identical* for joinder. Further, a quick comparison of the Apple and T-Mobile IPR proceedings show that the proceedings on the '210 and '891 patents that are the subject of the Motion recite virtually the same art and arguments – it was with respect to the '403 patent, not the subject of these motions for joinder, that T-Mobile's IPR included additional art and argument as compared to Apple's IPR.

presentations at hearings to avoid redundancy. Motion at 8. Patent Owner's argument that Petitioner is not prepared to work with Apple because Petitioner would require consent of *all* parties to terminate the consolidated proceeding is a non sequitur. As stated above, Petitioner merely seeks clarification that settlement or termination of the consolidated proceeding requires the consent of *all* parties, as is the case for any district court proceeding.

Third, Patent Owner argues that joinder will cause delay to the Apple IPR. Opposition at 3-6. Patent Owner will not be prejudiced. Petitioner's joinder request is directed at the same claims, same prior art, same grounds of unpatentability, and virtually identical arguments instituted in the Apple IPR. Although the Petitioner's petition included a declaration from Dr. Behnaam Aazhang, in addition to the Kakaes Declaration from the Apple IPR, the prejudice and delay of an additional declarant is minimal because Dr. Aazhang adopted the same opinions as Dr. Kakaes, numbering most of his paragraphs using a "K-x" numbering system to indicate that those paragraphs came from the Kakaes Declaration. Similarly, the procedures proposed by Petitioner account for points of disagreement between Apple and Petitioner, allowing Petitioner a mere seven pages for points of disagreement. Patent Owner points to no precedence or statutory authority requiring identical arguments to grant joinder, in fact, the proposed procedures adopted by the Board in several cases specifically acknowledge that minor points of disagreement may arise in consolidated proceedings. Accordingly, joinder is appropriate because it will promote the efficient and consistent resolution of the

validity of a single patent on the same grounds and will not prejudice the parties to the Apple IPR.

For these reasons, as well as those set forth in the Motion, Petitioner respectfully requests that its Petition for *Inter Partes* Review of U.S. Patent 5,659,891 be instituted and that the proceeding be joined with the Apple IPR on the two instituted grounds. As to the non-instituted grounds, Petitioner seeks continuation according to the schedule of the T-Mobile IPR, allowing the Board to make a substantive institution decision on these grounds and narrowing the grounds at issue in the T-Mobile IPR.² With the submission of this reply well ahead of the deadline, Petitioner respectfully submits that the issues are fully briefed and ripe for adjudication by the Board.

Although Petitioner believes that no fee is required for this Motion, the Commissioner is hereby authorized to charge any additional fees which may be required for this Reply to Deposit Account No. 50-5723.

² If the Board disagrees to allow the continuation of the T-Mobile IPR on the non-instituted grounds, T-Mobile respectfully requests joinder to the Apple IPR and consolidation of the two proceedings.

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