UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO. LTD.; SAMSUNG ELECTRONICS AMERICA, INC.; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC; AND SAMSUNG AUSTIN SEMICONDUCTOR, LLC;
Petitioner

v.

REMBRANDT WIRELESS TECHNOLOGIES, LP
Patent Owner

Case IPR2015-00118
Patent 8,023,580

PETITIONER'S REPLY TO PATENT OWNER'S OPPOSITION TO MOTION FOR JOINDER TO RELATED *INTER PARTES* REVIEW

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT...1

A. 35 U.S.C. § 315(c) Permits Joinder...1

B. Patent Owner's "Second Bite At The Apple" Argument......................3

C. Patent Owner Has Affirmatively Taken Steps To Make Scheduling Difficult 5

D. Patent Owner Will Not Be Prejudiced 7

III. CONCLUSION 7

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TABLE OF AUTHORITIES

Cases

Ali v. Fed. Bureau of Prisons, 552 U.S. 214 (2008) 2

Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984) 2

Eizo Corp. v. Barco N.V., IPR2014-00778, Paper 18 (PTAB Oct. 10, 2014) 1

In re Weiler, 790 F.2d 1576, 1579 (Fed. Cir. 1986) 4

Medtronic, Inc. et al. v. Endotach LLC., IPR2014-00695, Paper 18 (PTAB Sept. 25, 2014) 2

Microsoft Corp. v. Enfish LLC, IPR2014-00574 Paper 13 (PTAB September 29, 2014) 3

Samsung Elecs. Co. Ltd. v. Virginia Innovation Sciences, Inc., IPR2014-00557, Paper 10 (PTAB June 13, 2014) 4

Target Corp. v. Destination Maternity Corp., IPR2014-00508, Paper No. 18 (PTAB Sept. 25, 2014) 1, 2

Voris v. Eikel, 346 U.S. 328 (1953) 4

Statutes

35 U.S.C. § 311(a) 2

35 U.S.C. § 315(c) 1, 2, 4

Other Authorities

77 Fed. Reg. 48,679 3

H.R. Rep. No. 112-98, pt. 1 3

Rules

37 C.F.R. § 42.122(b) 2

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I. INTRODUCTION

Patent Owner opposition does not demonstrate that joinder is inappropriate. First, Patent Owner did not respond to any of Petitioner's statutory construction arguments, but instead simply cited case law with no analysis. Second, Patent Owner's 'second bite at the apple' argument does not take into account the purposes behind IPR proceedings, which is the efficient disposition of validity challenges. Third, Patent Owner's complaints regarding delaying the schedule are belied by its actions, which at every step, have been designed to cause delay. Finally, Patent Owner will not be prejudiced by being required to defend the validity of a handful of patent claims, all of which are asserted in litigation.

II. ARGUMENT

A. 35 U.S.C. § 315(c) Permits Joinder

Patent Owner's opposition does not respond to Petitioner's statutory construction argument (Paper 3, at 10-13) regarding the words of 35 U.S.C. § 315(c) stating that "any person who properly files a petition under section 311" may be joined as a party to an existing *inter partes* review proceeding. Instead, Patent Owner only block quotes from *Target Corp. v. Destination Maternity Corp.*, IPR2014-00508, Paper No. 18 (PTAB Sept. 25, 2014), and say the case is "clear, persuasive, and consistent with the legislative intent." Paper 8, at 4. As Patent Owner acknowledges, however, *Target* is not precedential. Moreover, *Target* includes a vigorous dissent by two judges on the panel. Patent Owner's only other authority is *Eizo Corp. v. Barco N.V.*, IPR2014-00778, Paper 18 (PTAB Oct. 10, 2014), and *Medtronic, Inc. et al. v. Endotach LLC*., IPR2014-00695, Paper 18

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(PTAB Sept. 25, 2014). In *Medtronic* and *Eizo*, only the concurrences (one written by *Target's* author) believed that 35 U.S.C. § 315(c) precluded joinder of a petition filed by a party to an instituted petition.

Petitioner respectfully submits that the majority in *Target* incorrectly interpreted § 315(c). In particular, the *Target* majority held that the petitioner there could not be "any person" under § 315(c) because the statute "does not refer to the joining of a petition," but rather "to the joining of a petitioner," and that therefore petitioner in that case could not be joined to a proceeding in which it is already a party. *Target*, Paper 18, at 3, 5 & n.2. As Petitioner pointed out in its motion, § 315(c) uses the broad phrase "any person who properly files a petition under section 311." Paper 3 at 10-11. Thus, contrary to the *Target* majority, § 315(c) does not refer to "joining of a petitioner." The statutory term "any" used in the § 315(c) is extremely broad. *See Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 221 (2008) (interpreting the use of "any" as "all-encompassing"). Thus, "any person" under § 315(c) does not exclude any one. Where congress sought to exclude "a person," it did so explicitly: 35 U.S.C. § 311(a) precludes the Patent Owner from filing a Petition against its own patent.

Patent Owner also did not respond to Petitioner's argument regarding the PTO's interpretation of § 315(c), found in 37 C.F.R. § 42.122(b), stating that "Joinder may be requested by a patent owner or petitioner." Petitioner respectfully submits that Patent Owner's silence shows that the PTO's interpretation is correct. *See also Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984). Finally, Petitioner notes that panels since *Target* have considered the

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