

Filed on behalf of Innovative Display Technologies LLC
By: Justin B. Kimble (jkimble@bcpc-law.com)
Jeffrey R. Bragalone (jbragalone@bcpc-law.com)
Bragalone Conroy P.C.
2200 Ross Ave.
Suite 4500 – West
Dallas, TX 75201
Tel: 214.785.6670
Fax: 214.786.6680

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MERCEDES-BENZ USA, LLC and
MERCEDES-BENZ U.S. INTERNATIONAL, INC.
Petitioners

v.

INNOVATIVE DISPLAY TECHNOLOGIES LLC
Patent Owner

Case IPR2015-00359
U.S. Patent No. 7,384,177

PATENT OWNER'S OPPOSITION TO MOTION FOR JOINDER

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450

Patent Owner Innovative Display Technologies (“IDT” or “Patent Owner”) hereby files this opposition to the Motion for Joinder (“Motion,” Paper No. 5) filed by Mercedes-Benz USA, LLC and Mercedes-Benz U.S. International (“Petitioners”). Patent Owner hereby requests that the Board deny Petitioners’ Motion.

I. STATEMENT OF MATERIAL FACTS

1. IDT’s patent portfolio is currently subject to 20 IPRs:
 - a. IPR2014-01092 (U.S. Patent No. 7,434,974);
 - b. IPR2014-01094 (U.S. Patent No. 7,404,660);
 - c. IPR2014-01095 (U.S. Patent No. 8,215,816);
 - d. IPR2014-01096 (U.S. Patent No. 7,537,370);
 - e. IPR2014-01097 (U.S. Patent No. 7,300,194);
 - f. IPR2014-01357 (U.S. Patent No. 6,755,547);
 - g. IPR2014-01359 (U.S. Patent No. 7,914,196);
 - h. IPR2014-01362 (U.S. Patent No. 7,384,177);
 - i. IPR2015-00359 (U.S. Patent No. 7,384,177);
 - j. IPR2015-00361 (U.S. Patent No. 6,755,547);
 - k. IPR2015-00363 (U.S. Patent No. 7,404,660);
 - l. IPR2014-00366 (U.S. Patent No. 8,215,816);
 - m. IPR2015-00368 (U.S. Patent No. 7,434,974);

- n. IPR2015-00487 (U.S. Patent No. 7,404,660);
- o. IPR2015-00489 (U.S. Patent No. 7,384,177);
- p. IPR2015-00492 (U.S. Patent No. 7,914,196);
- q. IPR2015-00493 (U.S. Patent No. 7,537,370);
- r. IPR2015-00495 (U.S. Patent No. 7,404,660);
- s. IPR2014-00496 (U.S. Patent No. 8,215,816); and
- t. IPR2015-00497 (U.S. Patent No. 7,434,974).

2. As seen above, many of those IPRs cover overlapping patents. In fact, the majority of those overlapping IPRs purport to advance identical grounds, the only difference being that different entities filed them. That is the case for the three IPRs concerning the patent-at-issue, U.S. Patent 7,384,177 (the “’177 patent”). Those three IPRs are IPR2014-01362; IPR2015-00359 (the instant IPR); and IPR2015-00489. Each of those three IPRs purports to advance identical grounds of invalidity. *See* Motion at 6 (“Petitioners’ arguments regarding the asserted references are identical to the arguments LG raised in the LG IPR”); *see also* IPR2015-00489, Paper 3 at 6 (stating the same).

3. LG Display Co., Ltd. filed IPR2014-01362 (the “first IPR”) against the ’177 patent on August 22, 2014.

4. Petitioner filed IPR2015-00359 (the instant IPR) against the ’177 patent on December 4, 2014, seeking to join the first IPR.

5. LG Electronics, Inc. filed IPR2015-00489 against the '177 patent on December 29, 2014, also seeking to join the first IPR.

6. The Board has yet to reach a decision on the institution on the first IPR.

II. AUTHORITY

The Board has the discretion to join an *inter partes* review under 35 U.S.C. § 315. If joinder is ordered, the Board has 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). The Board determines whether to grant joinder on a case-by-case basis, taking into account the particular facts of each case, substantive and procedural issues, and other considerations. IPR2014-00702, Decision, July 24, 2014, Paper 12 at 3 (citing 157 CONG. REC. S1376 (daily ed. Mar. 8, 2011) (statement of Sen. Kyl)). When exercising its discretion to join IPR proceedings, the Board is mindful that patent trial regulations, including the rules for joinder, must be construed to secure the just, speedy, and inexpensive resolution of every proceeding. *Id.* (citing 35 U.S.C. § 316(b); 37 C.F.R. § 42.1(b)).

The moving party has the burden of proof to establish that it is entitled to the requested relief. 37 C.F.R. §§ 42.20(c), 42.122(b). To determine whether to grant a motion for joinder, the Board considers many factors, including, (1) time and cost considerations, including the impact joinder would have on the trial schedule; and (2) how briefing and discovery may be simplified. IPR2014-00702, Paper 12 at 3.

III. ARGUMENT

Petitioner's Motion states that, "[a] motion for joinder should: (1) set forth the reasons why joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; (3) explain what impact (if any) joinder would have on the trial schedule for the existing review; and (4) address specifically how briefing and discovery may be simplified." Motion at 5-6. The Motion does not adequately show that requirements (1), (3), and (4) support joinder, and thus the Motion should be denied.

A. Statutorily, This IPR Cannot Be Joined to the First IPR.

The Board cannot join one IPR to another unless the first IPR is instituted. *See* 35 U.S.C. § 315 ("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 ...") (emphasis added). Because the Board has yet to institute the first IPR, this Motion cannot be granted.

B. In the Event that the First IPR is Instituted, the Motion to Join this IPR should be Denied.

Patent Owner does not anticipate that the first IPR will be instituted, but, if it is, the PTAB should nonetheless deny the Motion. However, Petitioner is open to the possibility of joinder if it does not affect the schedule in the first IPR or any IPRs

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.