

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

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

INNOVATIVE DISPLAY TECHNOLOGIES LLC  
Patent Owner

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Case IPR2015-00368  
U.S. Patent No. 7,434,974

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**PATENT OWNER'S OPPOSITION TO MOTION FOR JOINDER**

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Patent Owner Innovative Display Technologies (“IDT” or “Patent Owner”) hereby files this opposition to the Motion for Joinder (“Motion,” Paper No. 3) 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. IPR2014-01362 (U.S. Patent No. 7,384,177);
  - h. IPR2015-00359 (U.S. Patent No. 7,384,177);
  - i. IPR2015-00360 (U.S. Patent No. 7,300,194);
  - 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. IPR2015-00490 (U.S. Patent No. 7,300,194);
- 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 7,434,974 (the “’974 patent”). Those three IPRs are IPR2014-01092; IPR2015-00368 (the instant IPR); and IPR2015-00497. Each of those three IPRs purports to advance nearly identical grounds of invalidity. *See* Motion at 5 (“Petitioners’ arguments regarding the asserted references are identical to the arguments LG raised in the LG IPR”); *see also* IPR2015-00497, Paper 3 at 5 (stating the same).

3. LG Display Co., Ltd. filed IPR2014-01092 (the “first IPR”) against the ’974 patent on July 1, 2014.

4. Petitioners filed IPR2015-00368 (the instant IPR) against the ’974 patent on December 4, 2014, seeking to join the first IPR.

5. LG Electronics, Inc. filed IPR2015-00497 against the '974 patent on December 29, 2014, also seeking to join the first IPR.

6. On January 13, 2015, the Board denied institution the first IPR. IPR2014-01092, Paper No. 9.

## II. AUTHORITY

To serve as a basis for joinder, an IPR must first be 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). 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

#### 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 denied institution of IPR2014-01092, this Motion cannot be granted. Noting this fact and the fact that Petitioners have admitted that this IPR is identical to IPR2014-01092, Patent Owner also asks the Board to deny institution of this IPR for the same reasons as IPR2014-01092 before its preliminary response in this IPR is due.

#### B. In the Event that the Petitioner in the First IPR Actually Files and Succeeds in a Request for Reconsideration of the Denial to Institute, the Motion to Join this IPR should Nonetheless be Denied.

Because the first IPR was denied institution, the only chance for the first IPR’s survival is a motion for reconsideration. Patent Owner does not anticipate that reconsideration will be successful in this matter or that the petitioner will even file

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