

Filed on behalf of Innovative Display Technologies LLC
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG ELECTRONICS, INC.
Petitioner,

v.

INNOVATIVE DISPLAY TECHNOLOGIES LLC,
Patent Owner

Case IPR2015-00497
U.S. Patent No. 7,434,974

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 LG Electronics, Inc. (“Petitioner”). Patent Owner hereby requests that the Board deny Petitioner’s 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. IPR2015-00366 (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. IPR2015-00496 (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; and IPR2015-00497 (the instant IPR). Each of those three IPRs purports to advance nearly identical grounds of invalidity. *See* Motion at 1 (“Indeed, the invalidity grounds raised in this IPR are identical to the invalidity grounds raised in the LGD IPR.”); *see also Mercedes-Benz USA, LLC and Mercedes-Benz U.S. International, Inc., v. Innovative Display Technologies LLC*, IPR2015-00363, Paper 3 at 1 (stating the same using exactly the same language) (“Indeed, the invalidity grounds raised in this IPR are identical to the invalidity grounds raised in the LG IPR.”).

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

4. Mercedes-Benz USA, LLC and Mercedes-Benz U.S. International, Inc. filed IPR2015-00368 against the '974 patent on December 4, 2014, seeking to join the first IPR.

5. Petitioner LG Electronics, Inc. filed IPR2015-00497 (the instant IPR) 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. 9at 15.

II. AUTHORITY

To serve as a statutory 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). Once instituted, 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.

According to the plain language in § 315, the Board cannot join one IPR to another unless the first IPR is instituted. 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 not instituted IPR2014-01092, this Motion cannot be granted.

B. In the Event that the Petitioner in the First IPR Actually Files and Succeeds in a Request for Rehearing 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 rehearing. Patent Owner does not anticipate that

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