

DOCKET NO: 723-3847

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT: 5,561,811

TRIAL NO: IPR2015-00568

INVENTOR: Eric A. Bier

ASSIGNEE: Babbage Holdings, LLC

FILED: November 10, 1992

ISSUED: October 1, 1996

TITLE: METHOD AND
APPARATUS FOR PER-USER
CUSTOMIZATION OF
APPLICATIONS SHARED BY A
PLURALITY OF USERS ON A
SINGLE DISPLAY

**Mail Stop PATENT BOARD
Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450**

**PETITIONER'S MOTION FOR JOINDER
UNDER 35 U.S.C. 315(c) AND 37 C.F.R. §§ 42.22 AND 42.122(b)**

TABLE OF CONTENTS

I. Statement of Relief Requested 1

II. Statement of Material Facts..... 3

III. Statement of Reasons for Requested Relief 6

 A. Legal Standard 6

 B. Nintendo’s Motion for Joinder is Timely 6

 C. Joinder is Appropriate..... 7

IV. CONCLUSION 10

TABLE OF AUTHORITIES

FEDERAL CASES	Page(s)
<i>Dell Inc. v. Network-1 Security Solutions, Inc.</i> , IPR2013-00385, Paper No. 17 (July 29, 2013)	6
<i>Enzymotec Ltd. v. Neptune Techs & Bioresources, Inc.</i> , IPR2014-00556, Paper No. 19 (July 9, 2014)	7
 FEDERAL STATUTES	
35 U.S.C. § 315(b)	6
35 U.S.C. § 315(c)	1, 6
35 U.S.C. § 316(a)(11).....	9
 FEDERAL REGULATIONS	
37 C.F.R. § 42.100(c)	9
37 C.F.R. § 42.122(a)	6
37 C.F.R. § 42.122(b)	1, 6

I. Statement of Relief Requested

Petitioners Nintendo Co., Ltd. and Nintendo of America Inc. (“Nintendo”) respectfully submit this Motion for Joinder together with a Petition for *Inter Partes* Review of U.S. Patent No. 5,561,811 (“Petition”). Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b), Nintendo requests *inter partes* review and joinder with *505 Games, et al. v Babbage Holdings, Inc.*, Case IPR2014-00954 (the “’954 IPR”), in which trial was instituted on Ground 1 of the ’954 IPR petition on December 15, 2014. Nintendo’s Petition is in all material respects the same as Ground 1 of the petition in the ’954 IPR – no new arguments, no new patent claims and no new grounds of unpatentability are added by Nintendo’s Petition. Nintendo’s Motion for Joinder and accompanying Petition are being filed within one month of the decision instituting trial in the ’954 IPR, and are therefore timely.

Nintendo is filing this petition and joinder motion to ensure that the trial is completed in the event that the current petitioners in the ’954 IPR reach settlement with the Patent Owner. Joinder is appropriate here because Nintendo’s Petition is narrowly drafted to challenge only the single claim of USP 5,561,811 (the “’811 Patent) challenged in the ’954 IPR (claim 7), and only on the single ground of unpatentability (Ground 1) on which the Board instituted trial. Additionally, joinder will not adversely impact the trial schedule in the ’954 IPR, as Nintendo’s legal theories and claim charts are identical to the legal theories and claim charts

with respect to Ground 1 in the '954 IPR, and Nintendo relies on the same expert declaration relied on by the existing petitioners in the '954 IPR. Consequently, no additional expert discovery will be required if joinder is allowed, simplifying discovery. Furthermore, Nintendo will adhere to all applicable deadlines set forth by the December 15, 2014 Scheduling Order currently in place in the '954 IPR. Nintendo will coordinate with counsel for the '954 IPR petitioners regarding the consolidation of all filings and will not submit any separate filings unless Nintendo's position differs from the position of the '954 IPR petitioners, in which case Nintendo would limit any additional filing to seven (7) pages or less.¹ This procedure and continued cooperation of counsel will greatly simplify briefing if the Board permits joinder. Moreover, Nintendo would be prejudiced if the Board denies the motion for joinder because of the possibility that all petitioners will reach a settlement and successfully move to terminate the proceedings prior to the issuance of a final determination.

Any additional costs incurred by the existing parties to the '954 IPR will be minor and do not outweigh the prejudice to Nintendo that would result from a denial of joinder. Accordingly, joinder is appropriate and will not prejudice any

¹ Nintendo will continue on this basis unless and until the '954 IPR is terminated as to all other petitioners.

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.