#### UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD. and SAMSUNG ELECTRONICS AMERICA, INC., Petitioners,

v.

AFFINITY LABS OF TEXAS, LLC
Patent Owner

Case IPR2015-00820 Patent 8,532,641

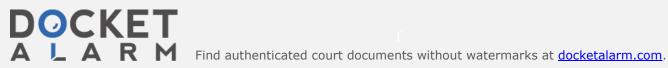
Before the Honorable KEVIN F. TURNER, LYNNE E. PETTIGREW, and JON B. TORNQUIST, *Administrative Patent Judges*.

PETITIONERS' REPLY IN SUPPORT OF THEIR MOTION FOR JOINDER UNDER 35 U.S.C. § 315(c) AND 37 C.F.R. § 42.122(b)



# **TABLE OF AUTHORITIES**

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Amneal Pharms LLC v. Endo Pharms., Inc., Case IPR2014-01365, Paper 13 (Feb. 4, 2015)	2
Ariosa Diagnostics v. Isis Innovation Ltd, Case IPR2012-00022, Paper 166 (Sept. 2, 2014)	2, 3, 4
Ariosa Diagnostics v. Isis Innovation Ltd, Case IPR2013-00250, Paper 24 (Sept. 3, 2013)	2
Butamax Advanced Biofuels LLC. v. Gevo, Inc., Case IPR2014-00581, Paper 8 (Oct. 14, 2014)	5
Conopco, Inc. v. The Procter & Gamble Co., Case IPR2014-00628, Paper 21 at 11 (Oct. 20, 2014)	5
Medtronic, Inc. v. Endotach LLC., Case IPR2014-00695, Paper 18 (Sept. 25, 2014)	5
Microsoft Corp. v. Proxyconn Inc., Case IPR2013-00109, Paper 15 (Feb. 25, 2013)	2
Reloaded Games, Inc. v. Parallel Networks LLC., Case IPR2014-00950, Paper 12 (Oct. 22, 2014)	4-5
Samsung Elecs. Co. v. Affinity Labs of Texas, LLC., Case IPR2014-00209, Paper 36 (Sept. 9, 2014)	1
Samsung Elecs. Co. v. Affinity Labs of Texas, LLC., Case IPR2014-00407, Paper 27 (Sept. 9, 2014)	1
Samsung Elecs. Co. v. Affinity Labs of Texas, LLC., Case IPR2014-00407, Paper 29 (Oct. 9, 2014)	5
Samsung Elec. Co. v. Rembrandt Wireless Tech., Lp, Case IPR2015-00118, Paper 14 (Jan. 28, 2015)	4



Samsung Elecs. Co. v. Virginia Innovation Scis., Inc., Case IPR2014-00557, Paper 10 (June 13, 2014)
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Standard Innovation Corp. v. Lelo, Inc., Case IPR2014-00907, Paper 10 (Dec. 1, 2014)5
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Target Corp. v. Destination Maternity Corp., Case IPR2014-00508, Paper 20 (Sept. 25, 2014)
Target Corp. v. Destination Maternity Corp., Case IPR2014-00508, Paper 28 (Feb. 12, 2015)
Target Corp. v. Destination Maternity Corp., Case IPR2014-00508, Paper 31 (Feb. 12, 2015)
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STATUTES
35 U.S.C.  § 315 (c)



## IPR2015-00820 United States Patent No. 8,532,641

## **OTHER AUTHORITIES**

37 C.F.R. § 42.100 (c)	5
H. R. Rep. No. 112-98, pt. 1	2
Final Rule, 77 Fed. Reg. 48,680 (Aug. 14, 2012)	2
157 Cog. Rec. S 1376 (daily ed. Mar. 8, 2011)	3



PO's Opposition (Pap. 9, "Opp.") fails to address the clear reasons for joinder here, and the Board should exercise its discretion to grant joinder.

## I. ISSUE JOINDER IS PROPER

PO's current argument that "\( 315(c) does not permit a party to join a proceeding in which it is already a party" to allow for joinder of issues (Opp. 2) should be rejected, as it flies in the face of the statute, PO's own prior admission that issue joinder is appropriate, and the decisions of multiple Board panels—including the recent expanded panel decision on rehearing in IPR2014-508, Pap. 28 ("Target II")—that issue joinder under § 315(c) is entirely proper. See also Target II, Paps. 31, 32. Indeed, in related proceedings between the same parties before this Board, PO consented to Petitioners' motion for joinder under § 315(c), agreeing that issue joinder was proper there. See IPR2014-407, Pap. 18 at 1. The Board, granting joinder, exercised its discretion to "join and consolidate the proceedings in their entirety," finding that "[s]ubstantively, [the proceedings] involve[d] the same patent, the same claims, the same parties, and overlapping prior art references." Id., Pap. 27; see also IPR2014-209, Pap. 36. The Board should again exercise its discretion to grant joinder here, where PO does not dispute these proceedings involve the same patent, parties, and counsel, the same expert for Petitioners, and a significant overlap in the asserted prior art.

While PO cites *Skyhawke Techs. v. L&H Concepts*, IPR2014-1485, Pap. 13 (Opp. 3), to suggest issue joinder is forbidden under § 315(c), that decision denied joinder relying on the <u>now-reversed Target I decision</u>. See id. (citing IPR2014-508, Paps. 18, 20 rev'd on



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