UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

AFFINITY LABS OF TEXAS, LLC,

Patent Owner.

IPR2015-00821

PATENT 8,532,641 B2

OPPOSITION TO PETITIONERS' MOTION FOR JOINDER UNDER 35 U.S.C. § 315(c) AND 37 C.F.R. § 42.122(b) AND REQUEST FOR SHORTENED RESPONSE TIME FOR PATENT OWNER'S PRELIMINARY RESPONSE

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I. INTRODUCTION

First, Petitioners' motion is procedurally improper because 35 U.S.C. § 315(c) does not permit a party to join a proceeding in which it is already a party. Because joinder is not procedurally proper, the Petition should be denied because Petitioners filed the Petition more than one year after they were served with a complaint alleging infringement of the '641 patent, the patent sought to be reviewed in the Petition.

Second, and if the substantive merits of the motion are considered, the motion for joinder is improper because it is nothing more than a request for reconsideration of substantially the same arguments that the Board has already rejected. The Board has repeatedly denied joinder under similar circumstances where a petitioner used the Board's institution decision as a roadmap for successive petitions. Finally, joinder would negatively impact the existing schedule of three other consolidated proceedings examining the '641 patent and would unduly prejudice the Patent Owner. Therefore, the motion for joinder should be denied.

II. LEGAL STANDARD

The Board has discretion to deny joinder of a party to an *inter partes* review proceeding. § 315. Petitioners have the burden to show that they are entitled to joinder. 37 C.F.R. § 42.20(c). When exercising the discretion to grant or deny joinder, the Board should be mindful that patent trial regulations must "be construed to secure the just, speedy, and inexpensive resolution of every proceeding." 37 C.F.R. § 42.1(b).

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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 of the existing proceeding; and (4) address specifically how briefing and discovery may be simplified. *See, e.g.*, *Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper 15 at 4 (Apr. 24, 2013).

III. STATEMENT OF MATERIAL FACTS IN DISPUTE

Patent Owner disputes Petitioners' representation that the newly asserted references cure any of the deficiencies identified by the Board in the prior institution decisions. (Paper 3 at 4-6). Further, Patent Owner disputes that Petitioners were not aware of the new reference, Ushiroda, before filing petitions challenging the '641 patent in IPR2014-01181, IPR2014-01182, and IPR2014-01184. *Id.* at 3.

IV. ARGUMENT

A. Petitioners' motion for joinder is procedurally defective

Petitioners' motion is procedurally defective because 35 U.S.C. § 315(c) does not permit a party to join a proceeding in which it is already a party. As a consequence, the Petition is barred by the one-year bar under § 315(b) because Petitioners were served with a complaint for infringement more than a year before filing the Petition.

In pertinent part, § 315(c) provides: "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)

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"Absent a clearly expressed legislative intention to the contrary, [the statute's plain] language must ordinarily be regarded as conclusive." *Gilead Scis., Inc. v. Lee*, 2015 U.S. App. LEXIS 2828, 10 (Fed. Cir. Feb. 26, 2015) (citing *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)). The meaning of this statute is unambiguous, "a party" may be joined to a proceeding—not "a petition." *See Skyhawk Techs., LLC v. L&H Concepts,* LLC, IPR2014-01485, Paper 13 at 3-4 (March 21, 2015) ("A person cannot be joined as a party to a proceeding in which it is already a party. The statute does not refer to the joining of a petition or new patentability challenges presented herein, nor does the statute refer to the joining of a new issue."). Because Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc. are already parties to IPR2014-01181, -1182, and -1184, they cannot be joined as parties to these proceedings. In other words, it is illogical and contrary to the plain language of the statute to join one's self to something that one is already a party to.

Statutory language must be interpreted to carry out the legislature's intent. A Committee Report is "the authoritative source for finding the Legislature's intent." *Garcia v. United States*, 469 U.S. 70, 76 (1984) "Committee Reports are 'more authoritative' than comments from the floor." *Id. (citing United States v. O'Brien*, 391 U.S. 367, 385 (1968); *Zuber v. Allen*, 396 U.S. 169, 187 (1969)). Here, the legislative history supports the plain meaning interpretation that "a party" does not mean a petition or new argument such that "a party" cannot be joined to a proceeding in

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which it is already "a party." The Final Committee Report stated that under § 315(c) and § 325(c), "[t]he Director may allow *other* petitioners to join an inter partes or post-grant review." H.R. Rep. No. 112-98, pt.1 at 76 (2011) (emphasis added). In *SkyHawke*, the Board relied on this very statement from the Report for determining that "a party" in § 315(c) cannot be one who is already a party to the other proceeding. IPR2014-01485, Paper 13 at 4. This statement clearly evidences the legislature's intent for § 315(c) to only allow "a party" to be joined to a proceeding, and not the same petitioner who is already a party.

Interpreting "a party" to mean a petition or new argument would violate the cardinal canon of statutory construction to avoid surplusage. "[A] statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (citing *Market Co. v. Hoffman*, 101 U.S. 112, 115(1879); *Babbitt v. Sweet Home Chapter, Cmtys. for Great Or.*, 515 U.S. 687, 698 (1995)). Section 315(d) grants the Board authority to "determine the manner in which the inter partes review or other proceeding or matter may proceed," including consolidation of proceedings. Interpreting § 315(c) to provide the same function as § 315(d), joining or consolidating petitions involving the same party, renders § 315(c) unnecessary and redundant. Therefore, such a construction should be avoided.

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