UNITED STATES PATENT AND TRADEMARK OFFICE

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 IPR2015-00821
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)

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PO's Opposition (Pap. 8, "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 now-reversed Target I decision. See id.* (citing IPR2014-508, Paps. 18, 20, *rev'd on*

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