Paper No. __
IPR2015-01045
Patent 5,563,883

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, INC.
Petitioner

v.

C-CATION TECHNOLOGIES, LLC
Patent Owner

IPR2015-01045
Patent 5,563,883

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

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I. STATEMENT OF PRECISE RELIEF REQUESTED

Petitioner Unified Patents Inc. requests that this proceeding ("the Unified IPR") be joined with the recently instituted IPR concerning the same patent in *Arris Group, Inc. v. C-Cation Technologies, LLC*, IPR2015-00635 (the "Arris IPR"). Neither Arris Group, Inc. nor C-Cation Technologies, LLC oppose joinder.

Joinder is appropriate because it will promote efficient and consistent resolution of the patentability of claims of the '883 patent and will not prejudice the Arris IPR parties. The Unified IPR and the Arris IPR challenge the same claims, on the same grounds, with support from the same expert. Indeed, since the Unified IPR petition and the Arris IPR petition are substantially identical, the Patent Owner responded with two substantially identical Patent Owner responses. The only apparent difference in its response to Unified's petition was to question whether Unified properly identified all real parties-in-interest because of Unified's unique business model. The Board addressed and ultimately dismissed that very same challenge after granting additional discovery in *Unified Patents Inc. v. Dragon Intellectual Property, LLC*, IPR2014-01252, Paper 37 (Feb. 12, 2015) at 8-14 (Decision on Institution), and the Patent Owner failed to offer a reason for the Board to deviate from that decision in this proceeding.

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The Board instituted IPR of claims 1, 3, and 4 in the Arris IPR on July 31, 2015, scheduling the due date for Patent Owner's response on November 5, 2015. An institution decision in the Unified IPR asserting those same grounds instituted in the Arris IPR is expected on or before August 19, 2015. This Motion for Joinder is thus not only timely under 37 C.F.R. §§ 42.22 and 42.122(b), but it is being filed at the earliest possible time, to ensure that there will be no impact on the Arris IPR trial schedule.

Should the Board join the parties, Unified agrees to subordinate itself, allowing Arris to lead the joined proceedings absent settlement by Arris, in line with common Board practice. Thus, joinder with the Arris IPR would minimally affect both its procedure and substance. Without joinder, if both the Arris IPR and Unified IPR are instituted on the same grounds, the two proceedings would go forward on a similar schedule but as two separate proceedings. Both the Patent Owner and the Board would need to duplicate efforts, and both Unified and Arris may be prejudiced by inconsistent argument and decisions.

Unified requests that the Board exercise its discretion and grant joinder of this proceeding with the Arris IPR proceeding.

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II. BACKGROUND AND RELATED PROCEEDINGS

A. Related Proceedings

Patent Owner C-Cation Technologies, LLC, most recently asserted the ’883 Patent against a number of companies now consolidated in *C-Cation Technologies, LLC v. Atlantic Broadband Group LLC, et al.* No. 1:15-cv-00295 (D. DE. April 7, 2015). Other defendants in that case include Baja Broadband, LLC; Bright House Networks, LLC; Broadband Group, LLC; Cablevisions Systems Corp.; Cox Communications, Inc.; Mediacom Communications Corp.; MetroCast Cablevision, LLC; RCN Telecom Services, LLC; WaveDivision Holdings, LLC; and WideOpenWest Finance, LLC.

B. Unified and Its Mission

Unified is not a party to any litigation with C-Cation, but C-Cation has asserted the ’883 patent against numerous entities in the content delivery sector. Unified has an interest in challenging the validity of patents it believes are unpatentable in the content delivery space, such as the ’883 patent. Unified was founded by intellectual property professionals over concerns with the increasing risk of non-practicing entities (NPEs) asserting poor quality patents against strategic technologies and industries. The founders thus created a first-of-its-kind company whose purpose is to deter NPE litigation by protecting technology sectors, like

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content delivery, the technology at issue in the ’883 patent.

III. STATEMENT OF REASONS FOR RELIEF REQUESTED

A. Legal Standard

The Leahy–Smith America Invents Act (AIA) allows an IPR party to be joined with a preexisting IPR. *See generally* Pub. L. No. 112-29, 125 Stat. 284 (2011). The statutory provision governing IPR joinder, 35 U.S.C. § 315(c), reads:

> (c) JOINDER.--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 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an inter partes review under section 314.

Motions for joinder should: (1) set forth 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 for the existing review; and (4) address specifically how briefing and discovery may be simplified. *See Kyocera Corporation v. Softview LLC*, IPR2013-00004, Paper No. 15 at 4 (April 24, 2013).

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