

Paper No. _____

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC. and AVAYA, INC.
Petitioners

v.

STRAIGHT PATH IP GROUP, LLC
Patent Owner

Case IPR2015-01398
U.S. PATENT NO. 6,108,704
CLAIMS 1, 11-12, 16, 19, 22-23, 27, and 30-31
Title: Point-To-Point Internet Protocol

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

I. INTRODUCTION

Cisco Systems, Inc. (“Cisco”) and AVAYA Inc. (“AVAYA,” and collectively with Cisco, “Petitioners”) submit the present Motion for Joinder pursuant to 37 C.F.R. § 42.122(b), which authorizes the filing of a “motion under § 42.22, no later than one month after the institution date of any *inter partes* review for which joinder is requested.” 37 C.F.R. § 42.122(b). Petitioners submit that the present Motion for Joinder is timely filed because it is being filed no later than one month after institution of the *inter partes* review proceeding with which joinder is sought.

Petitioners hereby move for joinder of the present petition for *inter partes* review **IPR2015-01398** (the “PETITIONERS’ IPR”) with **IPR2015-00209** (the “LG IPR”), filed by LG Electronics, Inc. (“LGE”), Toshiba Corp. (“Toshiba”), VIZIO, Inc. (“VIZIO”), and Hulu, LLC (“Hulu”) (collectively, “LG/Hulu”). The PETITIONERS’ IPR is identical to the LG IPR in all substantive respects, includes identical exhibits to the LG IPR, and relies upon the same expert declarant as the LG IPR. LG/Hulu does not oppose this motion, based on Petitioners’ and LG/Hulu’s agreement that LG/Hulu will continue to maintain the lead role in the proceedings so long as LG/Hulu are parties.

II. BACKGROUND AND RELATED PROCEEDINGS

The PETITIONERS’ IPR and the LG IPR are among a family of *inter partes* review proceedings relating to U.S. Patent Nos. 6,108,704; 6,009,469; and

6,131,121 that have been asserted by Straight Path IP Group, LLC (“Straight Path”) against numerous defendants.

The complaints in 3:14-cv-04312-WHA (*Straight Path IP Group, Inc. v. Cisco Systems, Inc.*) and 3:14-cv-04309-WHA (*Straight Path IP Group, Inc. v. AVAYA Inc.*) were first served on September 30, 2014. Accordingly, all petitions for *inter partes* review that have been filed by Petitioners are timely as prescribed by 35 U.S.C. § 315(b). Further, neither Cisco nor AVAYA has filed a civil action challenging the validity of a claim of the ’704 patent.

Currently, the family of *inter partes* review proceedings relating to the above identified Straight Path patents consists of the following proceedings that involve Petitioners and LG/Hulu:

PETITIONERS’ IPRs			LG IPRs		
Patent	Reference	Filed	Reference	Filed	Claims in IPR
6,108,704	2015-01398	6/15/2015	2015-00209	10/31/2014	1, 11-12, 14, 16, 19, 22-23, 27, 30-31
6,009,469	2015-01400	6/15/2015	2015-000198	10/31/2014	1-3, 5-6, 9-10, 14, 17-18
6,131,121	2015-01397	6/15/2015	2015-00196	10/31/2014	3, 4, 6-14

In addition to the present Motion for Joinder, Petitioners are presently filing Motions for Joinder for the other above-mentioned Petitioners' petitions with the corresponding petitions filed by LG/Hulu, subject to the same conditions sought by this motion. LG/Hulu does not oppose the motions.

III. DISCUSSION

If the Director institutes an *inter partes* review, Petitioners respectfully request that the Board exercise its discretion to grant joinder of the PETITIONERS' IPR and LG IPR proceedings pursuant to 35 U.S.C. § 315(c), 37 C.F.R. § 42.22, and 37 C.F.R. § 42.122(b). In support of this motion, Petitioners propose consolidated filings and other procedural accommodations designed to streamline the proceedings.

1. Reasons Joinder Is Appropriate

Joinder is appropriate in this case because it is the most expedient way to secure the just, speedy, and inexpensive resolution of the related proceedings. *See* 35 U.S.C. § 316(b); 37 C.F.R. § 42.1(b). Intentionally, the PETITIONERS' IPR is substantively identical to the corresponding LG IPR in an effort to avoid multiplication of issues before the Board. Given the duplicative nature of these petitions, joinder of the related proceedings is appropriate. As discussed below, Petitioners will agree to consolidated filings and discovery, and procedural

concessions, which LG/Hulu does not oppose and which do not prejudice Straight Path.

a. Substantively Identical Petitions

Petitioners represent that the PETITIONERS' IPR is identical to the LG IPR in all substantive respects. It includes identical grounds, analysis, and exhibits and relies upon the same expert declarant and declaration as the LG IPR. Accordingly, if instituted, maintaining the PETITIONERS' IPR proceeding separate from that of the LG IPR would entail needless duplication of effort.

b. Consolidated Filings and Discovery

Because the grounds of unpatentability in the PETITIONERS' IPR and LG IPR are the same, the case is amenable to consolidated filings. Petitioners will agree to consolidated filings for all substantive papers in the proceeding (*e.g.*, Reply to the Patent Owner's Response, Opposition to Motion to Amend, Motion for Observation on Cross Examination Testimony of a Reply Witness, Motion to Exclude Evidence, Opposition to Motion to Exclude Evidence and Reply). Specifically, Petitioners will agree to incorporate their filings with those of LG/Hulu in a consolidated filing, subject to the ordinary rules for one party on page limits. LG/Hulu and Petitioners will be jointly responsible for the consolidated filings.

Petitioners agree not to advance any arguments separate from those advanced by Petitioners and LG/Hulu in the consolidated filings. These limitations avoid

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