

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Aruba Networks, Inc., Hewlett Packard Enterprise Company, and HP Inc.,
Petitioners

v.

Mobile Telecommunications Technologies, LLC
Patent Owner.

Patent No. 5,915,210

Issued: June 22, 1999

Filed: July 24, 1997

Inventors: Dennis Wayne Cameron, Walter Charles Roehr, Jr., Jai P. Bhagat,
Masood Garahi, William D. Hays, David W. Ackerman

Title: METHOD AND SYSTEM FOR PROVIDING MULTICARRIER
SIMULCAST TRANSMISSION

Inter Partes Review No. IPR2016-00769

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

I. ARGUMENT

A. Joinder is In the Public Interest

In instituting IPR2015-01724 and IPR2015-01726 (the “Samsung IPRs”), the Board found that Samsung “has established a reasonable likelihood of prevailing on the [challenged] claims” of the ’891 and ’210 patents. No substantive paper has been filed since the Board instituted the Samsung IPRs. Thus, based on the information presently available, the challenged claims of the ’891 and ’210 patents are more likely than not unpatentable. Some of these same challenged claims are now being asserted in ongoing litigation against the Aruba Petitioners, users of accused products of the ARRIS petitioner, and third parties. Moreover, the Patent Owner has asserted these claims against other parties in the past (Paper No. 1 at 1-2), and there is no indication that Patent Owner will not do so again.

Under these circumstances – both ongoing litigation and possible future litigation involving the challenged claims ’891 and ’210 patents at issue here – there is a strong public interest in obtaining a final written decision on the challenged claims as soon as possible. If joinder is granted, the final written decision will be due on February 16, 2017. If joinder is not granted and the Aruba and ARRIS IPRs continue on the default schedule, the institution decision will not be due until September 29, 2016 (six months from the 3/29/16 Notice of Filing Date Accorded), and a final written decision will not be due until September 29,

2017. This is a difference of more than seven months. An additional seven months of litigation can amount to a significant expense, both for defendants that are already involved in suits by Patent Owner on these patents, and for other defendants that Patent Owner may name in future Eastern District of Texas lawsuits. Additionally, seven months will have passed from the February 16th date of the Board's Institution Decision in the Samsung IPRs. This length of time will place a burden on the Board as it will have to expend more effort to re-familiarize itself with the technology at issue than would be the case if joinder were granted.

B. The Board Has The Authority to Grant Joinder On An Expedited Basis

The only obstacle to granting joinder immediately is the Patent Owner's desire to file a Preliminary Response. However, as discussed on the April 19th conference call, the Board has the authority to expedite Patent Owner's Preliminary Response under 37 C.F.R. § 42.5(c)(1). Petitioners in the Aruba and ARRIS IPRs have proposed a schedule to allow for Patent Owner's preliminary response. In particular, the Aruba and ARRIS petitioners proposed the following schedule on the April 19th call (recalling that no motion to amend is possible):

Patent Owner Preliminary Response:	May 20, 2016
Due Date 1 (Patent Owner Response)	July 20, 2016
Due Dates 2 and 3 (Petitioner's Reply)	September 20, 2016
Due Date 4 (Mot. for Obs., Mots. To Exclude)	October 5, 2016

Due dates 5-7 would remain unchanged. It should be noted that, under this proposed schedule, even if the Board were to take a month after Patent Owner's preliminary response to issue its institution decision, Patent Owner would have two months to file its Response, which is almost exactly the time it had left to file its response when it filed its April 14th motion to terminate the Samsung IPRs.

C. Joinder Would Neither Punish Nor Unfairly Prejudice Patent Owner

Patent Owner's Opposition asserts that Patent Owner would be "punished" for focusing on settlement with Samsung, and that Patent Owner would be "prejudiced," if the Aruba and ARRIS IPRs are joined with this case. Opp. at 3-4. This "punishment" and "prejudice" would result because Patent Owner would need to file its Patent Owner Response by June 18th, which is just over two months from the filing of its motion to terminate on April 14th. However, as discussed above, the timing issue is moot in light of the proposed schedule discussed above. Moreover, Patent Owner is not entitled to have its IPR terminated just because it settled with Samsung. Indeed, in IPR2015-00568, Paper No. 12, the Board granted joinder after a settlement had been reached despite Patent Owner's claim of prejudice. *Id.* at 3-5. A Patent Owner can always claim some prejudice when IPRs are joined, but the correct inquiry is whether the prejudice is unfair. Under the proposed schedule set out above, there is neither *unfair* prejudice nor punishment because patent owner will have more than sufficient time for its filings.

D. Patent Owner's Other Objections to Joinder Are Baseless

In section B of its Opposition in IPR2016-00769, Patent Owner asserts prejudice because the Aruba and ARRIS IPR petitioners had not agreed to consolidate filings. This issue is now moot because those petitioners have now agreed to consolidated filings. Ex. 1023 at 21:22-22:9.

In Section C of its Opposition, Patent Owner asserts that the Aruba and ARRIS IPR petitioners are seeking joinder only to improve their bargaining position. Of course, the same can be said of Patent Owner's motive in opposing joinder. When one considers that a reasonable likelihood of unpatentability has been established, and the public's interest (which the Opposition admits at 3 is a relevant factor) in avoiding further waste of time and money on patent claims that should not have been granted, the balance of interest clearly favor joinder.

In Section D, the Patent Owner relies on the denial of joinder in IPR2015-00271 to argue that joinder should be denied here because of a one month period between the Samsung IPR institution decision and the filing of the Aruba and ARRIS petitions. However, neither the Aruba nor the ARRIS petitioners had any prior notice that settlement was imminent, and Patent Owner admits that it kept this information a secret. Opp. at 5. Moreover, IPR2015-00271 and this case are very different. Granting joinder in IPR2015-00271 would have involved new substantive grounds and three additional claims. IPR2015-00271, Paper 15, at 4-5.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.