

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Samsung Electronics, Co., Ltd.,  
Samsung Electronics America, Inc., and  
Samsung Semiconductor, Inc.  
Petitioner,

v.

Raytheon Company  
Patent Owner.

Patent No. 5,591,678

Issued: January 7, 1997

Filed: June 7, 1995

Inventors: Joseph J. Bendik, Gerard T. Malloy, Ronald M. Finnila  
Title: PROCESS OF MANUFACTURING A MICROELECTRIC DEVICE  
USING A REMOVABLE SUPPORT SUBSTRATE AND ETCH-STOP

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*Inter Partes* Review No. IPR2016-00962

**REPLY IN SUPPORT OF MOTION FOR JOINDER UNDER  
35 U.S.C. § 315(c) AND 37 C.F.R. §§ 42.22 and 42.122(b)  
TO RELATED *INTER PARTES* REVIEW IPR2016-00209**

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## I. INTRODUCTION

The Board routinely grants motions for joinder where the party seeking joinder introduces identical arguments and the same grounds raised in the existing proceeding. See, e.g., *Perfect World Entm't, Inc. v. Uniloc USA, Inc., et al.*, IPR2015-01026, Paper 10, (PTAB Aug. 3, 2015); *Fujitsu Semiconductor Limited v. Zond, LLC*, IPR2014-00845, Paper 14 (PTAB Oct. 2, 2014); *Enzymotec Ltd. v. Neptune Technologies & Bioresources, Inc.*, IPR2014-00556, Paper 19 (PTAB Jul. 9, 2014). This is the exact situation here, and Samsung's motion for joinder should be granted consistent with the Board's "policy preference for joining a party that does not present new issues that might complicate or delay an existing proceeding." *Enzymotec*, IPR2014-00556, Paper 19, at 5; see also 157 Cong. Rec. S1376 (daily ed. Mar. 8, 2011) (statement of Sen. Kyl) ("The Office anticipates that joinder will be allowed as of right – if an *inter partes* review is instituted on the basis of a petition, for example, a party that files an **identical petition** will be joined to that proceeding . . .") (emphasis added).

Joinder is also routinely granted when the petitioner files a petition and motion for joinder within 30 days of the institution of trial in the existing proceeding. *Nintendo of Am., Inc., et al. v. Babbage Holdings, LLC*, IPR2015-00568, Paper 12 (PTAB Mar. 18, 2015)). Because Samsung timely filed its petition and motion for joinder within one month of the March 29, 2016 institution of

Sony's IPR and Samsung's request for joinder is typical and routine, Samsung's motion for joinder should be granted.

## II. ANALYSIS

### A. **Samsung's joinder request is timely, raises no new issues and would not complicate the proceedings in the Sony IPR.**

Patent Owner argues that Samsung's joinder motion should be denied because Samsung's copied petition accompanying the joinder motion is untimely. Patent Owner is wrong.

The Board routinely grants joinder in cases where, as here, the petition of the party seeking joinder "asserts identical grounds of unpatentability, challenging the same claims" of the challenged patent. *Fujitsu*, Paper 14 at 4. Here, Samsung's petition is substantively identical to the petition filed in the Sony IPR and Samsung has submitted substantially the same supporting declaration as did Sony. By joining the two proceedings, the substantive issues would not be unduly complicated. *See Perfect World*, IPR2015-01026, Paper 10 at 5-6 (granting joinder where petitioner brought the same challenges presented by the existing IPR). In fact, joinder would avoid duplication and promote the efficient resolution of both proceedings because Patent Owner would address the challenges in a single proceeding. *Id.*

In opposing Samsung's joinder motion, Patent Owner conflates the distinct statutory frameworks for filing an IPR petition in the first instance, with filing a

motion for joinder to a timely filed IPR petition by another party. Here, Samsung has timely filed its joinder motion. Patent Owner's response is not due until June 15, 2016. *See* Sony IPR, Scheduling Order, Paper 13; *see also Perfect World*, IPR2015-01026, Paper 10 at 6 (granting joinder despite patent owner's argument that the existing IPR has reached its substantive stages). Samsung is only taking an understudy role in the Sony IPR and is not participating in the Sony IPR discovery. Samsung has no intention to duplicate any discovery conducted (or anticipated) in the Sony IPR. Rather, Samsung simply seeks to join the ongoing Sony IPR, adopting its "understudy" role upon the grant of joinder.

Further, Patent Owner's reliance on *ZTE Corp. and ZTE (USA) Inc. v. Contentguard Holdings, Inc.*, IPR2013-00454, Paper No. 12 (PTAB September 25, 2013) is misplaced. In that case, unlike here, the same petitioner had sequentially filed two petitions, with the second petition having been filed outside the one year period in 35 U.S.C. §315, and after an entry of judgment in the first IPR. "In this instance" the Board stated "there no longer is a pre-existing proceeding." *Id.* at 6. The Board went on to add "it would be unjust and inequitable to subject the Patent Owner to a new challenge by a Petitioner who unsuccessfully had attempted to institute *inter partes* review on the claims in a previous petition, if the second petition is not itself filed within the one-year period in 35 U.S.C. §315(b) and if a joinder motion has been denied." Thus, the *ZTE* decision is inapposite because

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