

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioner

v.

Evolved Wireless LLC,

Patent Owner

**MOTION FOR JOINDER UNDER
35 U.S.C. § 315(c) AND 37 C.F.R. §§ 42.22 AND 42.122(b)
TO INTER PARTES REVIEW OF IPR2016-00758**

Case No. IPR2017-00106

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I. STATEMENT OF PRECISE RELIEF REQUESTED

Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (“Samsung”) (collectively “Petitioner”) respectfully submit this Motion for Joinder, together with a petition (the “Samsung Petition”) for *inter partes* review of U.S. Patent No. 8,281,481 (“the ’481 patent”) filed concurrently herewith, IPR2017-00106 (the “Samsung Petition”). Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b), Petitioner requests institution of an *inter partes* review and joinder with the *inter partes* review proceeding IPR2016-00758 filed by ZTE (USA) Inc. (“ZTE”) and HTC Corporation and HTC America, Inc. (“HTC”) (the “758 Proceeding”), which was instituted on September 16, 2016 and concerns the same ’481 patent. Petitioner timely filed this motion within one month of the institution of the 758 Proceeding. *See* 37 C.F.R. § 42.122(b); *Taiwan Semiconductor Manufacturing Co., Ltd. v. Zond, LLC*, IPR2014-00781, Paper 5 at 3 (“[P]rior authorization for filing a motion for joinder—prior to one month after the institution date of any *inter partes* review for which joinder is requested—is not required.”)

Joinder will efficiently resolve the challenges to the ’481 patent in the 758 Proceeding, and will neither impact the substantive issues or schedule in that proceeding, nor prejudice the parties in the 758 Proceeding. The Samsung Petition raises the same grounds of unpatentability for which the 758 Proceeding was instituted, challenges the same claims, and relies on the same prior art, arguments and

evidence presented in ZTE and HTC's petition for *inter partes* review. Indeed, in an effort to avoid multiplication of issues before the Board, the Samsung Petition duplicates the challenges presented on the instituted grounds in the 758 Proceeding and it relies on the same supporting expert declaration. In addition, Petitioner explicitly agrees to consolidated discovery and briefing as described below, and is willing to accept a limited role with ZTE's counsel acting as the lead counsel as long as ZTE and HTC remain in the proceeding.¹ Accordingly, Petitioner submits that joinder is appropriate because it will not prejudice the parties or impact the substantive issues and schedule in the 758 Proceeding, while efficiently resolving in a single proceeding the question of the '481 patent's validity based on the instituted grounds of the 758 Proceeding.

¹ Petitioner notes that on October 14, 2016, Apple Inc. ("Apple") and Microsoft Corporation, Microsoft Mobile Oy, and Microsoft Mobile Inc. (f/k/a Nokia Inc.) ("Microsoft") also filed a motion requesting joinder to the 758 Proceeding (IPR2017-00068). In the event that Apple and Microsoft's motion for joinder is granted, Petitioner agrees to the same procedures for simplified briefing and discovery discussed herein and, in the event that parties to the 758 Proceeding settle, Petitioner agrees to work with Apple and Microsoft to determine which counsel will serve as the lead counsel in the proceedings.

II. STATEMENT OF MATERIAL FACTS

1. The '481 patent is entitled "Method of Transmitting Data in a Mobile Communication System" and lists Yeong Hyeon Kwon *et al.* as inventors. The '481 patent issued on July 10, 2012. Evolved Wireless, LLC (the "Patent Owner") is believed to have all rights, title, and interest in '481 patent.

2. On June 25, 2015, Patent Owner filed civil actions against multiple Defendants in the United States District Court for the District of Delaware asserting the '481 patent, along with other patents, including actions against ZTE in Civil Action No. 1:15-cv-00546-SLR-SRF, against Samsung in Civil Action No. 1:15-cv-00545-SLR-SRF, against HTC in Civil Action No. 1:15-cv-00543-SLR-SRF, against Apple in Civil Action No. 1:15-cv-00542-SLR-SRF, and against Microsoft in Civil Action No. 1:15-cv-00547-SLR-SRF. A jury trial concerning the '481 patent as well as other patents is currently scheduled for February 5, 2018.

3. On March 23, 2016, ZTE and HTC filed a petition for *inter partes* review requesting cancellation of claims 1-4, 6, 8-11, and 13 of the '481 patent, which was assigned Case No. IPR2016-00758 (the "758 Proceeding").

4. On September 16, 2016, the Board instituted *inter partes* review in the 758 Proceeding, finding that a reasonable likelihood existed that the ZTE and HTC's petition would prevail in showing the unpatentability of claims 1-3, 6, 8-10, and 13 of the '481 patent.

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