UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY CORPORATION, SONY MOBILE COMMUNICATIONS (USA) INC., SONY MOBILE COMMUNICATIONS AB & SONY MOBILE COMMUNICATIONS INC.
Petitioners

v.

CREATIVE TECHNOLOGY LIMITED
Patent Owner

U.S. Patent No. 6,928,433

Case No. IPR2017-00595

PATENT OWNER'S OPPOSITION TO PETITIONERS' MOTION FOR JOINDER PURSUANT TO 37 C.F.R. § 42.23

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I. INTRODUCTION

In this petition for *inter partes* review (the "Second IPR"), the Petitioners seek a second bite at the apple by re-arguing the same invalidity grounds for which this Board previously denied institution in IPR2016-01407 (the "First IPR"). Not only do the Petitioners seek to reargue the same grounds that were previously denied institution, but they also seek to join this Second IPR with the First IPR. In its preliminary patent owner response, Patent Owner intends to set forth the reasons why no trial should be instituted in this Second IPR. In the present brief, Patent Owner explains why, even if the Board were to institute a second trial, the Board should nonetheless deny the motion to join the two proceedings. In particular, the Board should deny Petitioners' motion to join the First IPR and Second IPR because: (i) Petitioners have failed to make a *prima facie* showing that joinder is appropriate; (ii) the schedules are incompatible and joinder would cause unnecessary delay of the First IPR; (iii) the petitions involve different art and different arguments; (iv) the statutory requirements for joinder are not met because no new party is being joined; and (v) denying joinder would not prejudice Petitioners because this second petition is not time-barred.[1]

[1] The Board can also deny joinder under 35 U.S.C. § 315(c) on the grounds that this petition constitutes an improper second bite at the apple. *See Micro Motion,*

For these reasons, as expressed more fully below, the Petitioners have failed to demonstrate that joinder is appropriate. Accordingly, the Board should deny the motion for joinder.

II. LEGAL STANDARD

Section 315(c) of Title 35 of the U.S. Code provides that:

> "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 parties review under section 314.

Thus, joinder is discretionary based on the particular circumstances of each proceeding. *See Unified Patents, Inc. v. Personalweb Techs., LLC*, IPR2014-00702, slip op. at 4 (PTAB Jan. 13, 2015) (Paper No. 12). The party seeking joinder bears the burden of proving that it is entitled to the requested relief. 37 C.F.R. § 42.20(c); *Roche Molecular Systems Inc. v. Illumina, Inc.*, IPR2015-01091, slip op. at 7 (PTAB Oct. 30, 2015) (Paper No. 18). Under this Board's practice, a motion for joinder must: (1) set forth the reasons joinder is appropriate; (2) identify

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Inc. v. Invensys Systems, Inc., IPR2014-01409, slip op. at 14 (PTAB Feb. 18, 2015) (Paper No. 14).

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