Paper No. __

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.

Case No. IPR2017-00595
Patent No. 6,928,433

PETITIONERS' REPLY TO PATENT OWNER'S OPPOSITION TO MOTION FOR JOINDER

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TABLE OF CONTENTS

I. ARGUMENT 1

A. Joinder Is Appropriate Because the Prior Art and Arguments Here Are Substantially Similar to Those of the First IPR. 1

B. Any Delay in the First IPR Schedule Would Be Modest and Will Not Prejudice the Patent Owner. 3

C. Filing Months in Advance of the § 315(b) Bar Favors Joinder. 4

D. Precedent Supports Joining IPR Proceedings By the Same Party. 5

II. CONCLUSION 5

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TABLE OF AUTHORITIES

CASES

Ariosa Diag. v. Isis Innov. Ltd.,
IPR2013-00250, Paper 24 (Sep. 3, 2013)..1, 3

Microsoft Corp. v. Bradium Tech. LLC,
IPR2016-00449, Paper 9 (July 27, 2016)..4

Oxford Nanopore Tech. Ltd. v. Univ. of Wash.,
IPR2015-00057, Paper 10 (Apr. 27, 2015) 1, 3

Roche Molecular Systems Inc. v. Illumina, Inc.,
IPR2015-01091, Paper 18 (Oct. 20, 2015)..3

Samsung Elec. Co., Ltd. v. Virginia Innov. Scis.,
IPR2014-00557, Paper 10 (Jun. 13, 2014) 1, 3

Sony Corp. of Am. v. Network-1 Security Solutions, Inc.,
IPR2013-00495, Paper 13 (Sept. 25, 2015) 3

Target Corp. v. Destination Maternity Corp.,
IPR2014-00508, Paper 28 (Feb. 12, 2015)..5

Zhongshan Broad Ocean Motor Co., Ltd. v. Nidec Motor Corp.,
IPR2015-00762, Paper 16 (Oct. 5, 2015).. 1, 3, 5

REGULATIONS

37 C.F.R. § 42.122(b) 3

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Joinder should be granted because it will secure the just, speedy, and inexpensive resolution of both IPR trials.

I. ARGUMENT

A. Joinder Is Appropriate Because the Prior Art and Arguments Here Are Substantially Similar to Those of the First IPR.

Patent Owner opposes joinder because "the grounds are not identical." Opp. at 4. However, the Board frequently joins IPR proceedings where, as here, first and second IPR petitions filed by the same petitioners involve similar, though not identical, prior art and issues. *E.g.*, *Ariosa Diag. v. Isis Innov. Ltd.*, IPR2013-00250, Paper 24 (Sep. 3, 2013); *Samsung Elec. Co., Ltd. v. Virginia Innov. Scis.*, IPR2014-00557, Paper 10 (Jun. 13, 2014); *Oxford Nanopore Tech. Ltd. v. Univ. of Wash.*, IPR2015-00057, Paper 10 (Apr. 27, 2015); *Zhongshan Broad Ocean Motor Co., Ltd. v. Nidec Motor Corp.*, IPR2015-00762, Paper 16 (Oct. 5, 2015). Joinder is appropriate when similarity of issues presents an opportunity for some (even if not perfect) efficiencies. *Samsung*, IPR2014-00557, Paper 10 at 17-18.

Here, the issues in the First IPR and the Second Petition substantially overlap: the same parties, the same patent, the same challenged claims, the same claim constructions, the same prior art, and similar grounds.

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The Second Petition includes grounds primarily based on Looney (Ex. 1009) and cites nearly identical disclosures within Looney as the First Petition. The First Petition cited software functionality of Looney and a hardware embodiment that executes that software. The Second Petition cites the same software disclosures of Looney, but to account for the Board's preliminary construction of "portable media player" in the First IPR (the Board adopted a construction not proposed by either party), the Second Petition cites a different hardware embodiment of Looney.

Patent Owner's Opposition fails to address the Motion's explanation that joinder will not prejudice Patent Owner because Patent Owner is already familiar with the prior art cited in the Second Petition. The cited teachings of Looney were largely the basis for Grounds 1-3 in the First Petition, which Patent Owner addressed in its Preliminary Patent Owner Response in the First IPR. Patent Owner notes differences between the functionality of Looney cited in instituted Grounds 7-9 of the First IPR and in the Second Petition's grounds. Opp. at 4, 7. Yet, the teachings of Looney cited in the Second Petition are at issue in instituted Grounds 7-9 of the First IPR. Patent Owner itself relies on those same teachings in disputing how Petitioners propose that a POSA would have viewed Looney together with other references. First IPR (IPR2016-01407), Paper 10, at 54-55. Patent Owner's own reliance on these same teachings in the First IPR confirm that the overlap of issues between the First IPR and the Second Petition is substantial.

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