

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION

Petitioner,

v.

WINDY CITY INNOVATIONS LLC

Patent Owner.

Patent No. 8,694,657

Title: REAL TIME COMMUNICATIONS SYSTEM

Inter Partes Review No. IPR2017-00606

PETITIONER'S MOTION FOR JOINDER

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I. Introduction

Microsoft filed a petition for *inter partes* review of U.S. Patent No. 8,694,657 (“657 Patent”), in IPR2016-01155 (The “Earlier IPR”), challenging over 150 of the 657 Patent’s 671 claims. The Earlier IPR was instituted on December 8, 2016 as to all challenged claims. Petitioner Microsoft Corporation (“Microsoft”) hereby moves under 35 U.S.C. § 315(c) to join the present proceeding to the Earlier IPR. Doing so will add to the proceeding eight dependent claims¹—asserted by Patent Owner against Petitioner in district court after Petitioner filed the Earlier IPR—that directly depend from claims on which trial is already instituted. These eight claims contain a single limitation that is *identical* to one found in claims for which trial is already instituted.² The minimal additional work

¹ Claims 203, 209, 215, 221, 477, 482, 487, and 492 (the “Petition Claims”).

² The analysis of these additional claims with respect to this limitation can be found in the concurrently filed petition in Section V.E starting on page 38. That analysis is the same analysis set forth in the Earlier IPR in Section V.D.17 on pages 60-62. The concurrently filed petition also addresses claims 189, 202, 208, 214, 220, 465, 476, 481, 486, and 492 but only because the Petition Claims depend from these claims. The concurrently filed petition also addresses claim 1, but only

to address these claims is “strongly outweighed by the public interest in having consistency of outcome concerning similar sets of claimed subject matter and prior art,” and Microsoft accordingly requests that this petition be joined to the Earlier IPR. *See Samsung Electronics Co., Ltd. V. Virginia Innovation Sciences, Inc.*, IPR2014-00557, Paper 10 at 18 (PTAB June 13, 2014).

II. Background and Related Proceedings

On June 2, 2015, Patent Owner filed a complaint alleging infringement of the 657 Patent against Petitioner. *Windy City Innovations, LLC v. Microsoft Corporation*, 1:15-cv-103 (W.D.N.C.). This case was transferred to the Northern District of California (No. 3:16-cv-01729-RS). Patent Owner also filed a complaint against Facebook, Inc. *Windy City Innovations, LLC v. Facebook, Inc.*, 1:15-cv-102 (W.D.N.C.). This case also was transferred to the Northern District of

to make it clear that the analysis here is the same as in the Earlier IPR—the Earlier IPR analyzed claims 189 and 465 with reference to claim 1. The analysis of claims 1, 189, 202, 208, 214, 220, 465, 476, 481, 486, and 492 presented in the concurrently filed petition is the same analysis set forth in the Earlier IPR. Trial has already been instituted with respect to claims 1, 189, 202, 208, 214, 220, 465, 476, 481, 486, and 492 in the Earlier IPR proceeding.

California (No. 3:16-cv-01730-RS). On June 3, 2016, Microsoft filed the Earlier IPR challenging the 657 Patent.³ On June 3, 2016, Facebook filed IPR2016-01159 also challenging the 657 Patent. On October 20, 2016, more than four months after Petitioner's § 315(b) bar date passed, Patent Owner served its infringement contentions on Microsoft in the 1:15-cv-103 case, identifying for the first time which of the 671 claims of the 657 Patent it accused Microsoft of infringing. In its infringement contentions, Patent Owner asserted independent claims 189 and 465 as well as dependent claims 203, 209, 215, 221, 477, 482, 487, and 492 of the 657 Patent. Trial was instituted in IPR2016-01155 on December 8, 2016 on all claims

³ The Earlier IPR challenged claims 1, 2, 18, 27, 35, 43, 51, 65, 79, 93, 100, 108, 114, 126, 138, 150, 156, 168, 170, 172, 176, 178, 180, 182–90, 202, 208, 214, 220, 226, 238, 250, 262, 268, 274, 280, 292, 304, 316, 322, 328, 334, 336, 340, 342, 344, 346, 348, 350, 352–54, 362, 366, 370, 374, 378, 386, 394, 402, 406, 410, 414, 422, 430, 438, 442, 450, 452, 454, 456, 458, 460, 462, 464–66, 476, 481, 486, 491, 496, 505, 515, 525, 530, 535, 545, 555, 565, 570, 580, 582, 584, 586, 588, 590, 592, 594, 596–98, 606, 607, 615–17, 619, 621, 622, 624–26, 628, 630, 632–34, 636, 638, 640–42, 644, 646, and 648–71.

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