

Filed on behalf of Godo Kaisha IP Bridge 1

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GLOBALFOUNDRIES, INC.,
Petitioner,

v.

GODO KAISHA IP BRIDGE 1,
Patent Owner.

Case IPR2017-00920
U.S. Patent No. 6,538,324

**PATENT OWNER'S COMBINED OPPOSITION TO PETITIONER'S
MOTION FOR JOINDER AND PRELIMINARY RESPONSE**

Mail Stop PATENT BOARD, PTAB
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I. INTRODUCTION

Patent Owner, Godo Kaisha IP Bridge 1 (“IP Bridge”) submits this Combined Opposition To Petitioner’s Motion For Joinder And Preliminary Response (“Opposition”) in response to Petitioner GlobalFoundries, U.S. Inc.’s (“Global U.S.”) Motion for Joinder (Paper 3) and Petition filed in Case IPR2017-00920. Global U.S. seeks to join Case IPR2017-00920 with Case IPR2016-01264, which was instituted on December 21, 2016.

A similar Petition and Motion for Joinder were filed by GlobalFoundries, Inc. (“Global”) in IPR2017-00757. The Petition in this case (IPR2017-00920) filed by Global U.S. states that the Petition filed in IPR2017-00757 will be withdrawn (IPR2017-00920 Petition, p. 40, footnote 9). A call was held with the Board on February 22, 2017 and the Board issued an Order in Cases IPR2017-00753, IPR2017-00757, IPR2017-00849, IPR2017-00850, IPR2017-00919, IPR2017-00920, IPR2017-00925 and IPR2017-00926 authorizing Petitioner to file a motion to dismiss the petitions in Cases IPR2017-00753, IPR2017-00757, IPR2017-00849 and IPR2017-00850 within one week of a filing date being accorded to the corresponding Petitions in Cases IPR2017-00919, IPR2017-00920, IPR2017-00925 and IPR2017-00926. Cases IPR2017-00919 and IPR2017-00920 were accorded filing dates on February 23, 2017 (Paper 5). Petitioner filed Unopposed Motions to Dismiss Cases IPR2017-00753 and IPR2017-00757 on

March 1, 2017. The Board granted the Motions to Dismiss in Cases IPR2017-00753 and IPR2017-00757 (and in Cases IPR2017-00849 and IPR2017-00850) on March 10, 2017.

Petitioner acknowledges that the present Motion for Joinder was “filed after the one month date on which [IPR2016-01264] was instituted under 37 C.F.R. §§ 42.22 and 42.122(b).” Motion for Joinder (Paper 3), p. 4.

II. ARGUMENT

A. Petitioner’s Motion for Joinder Should Be Denied Because It Was Not Timely Filed

Joinder is governed by 35 U.S.C. § 315(c), which provides the Director with discretion whether or not to permit a party to join an instituted IPR proceeding:

(c) **Joinder.** - 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 partes* review under section 314.

The PTAB Rules require that a request for joinder must be filed within one month after the institution date of an IPR proceeding:

(b) **Request for joinder.** Joinder may be requested by a patent owner or petitioner. Any request for joinder must be filed, as a motion under § 42.22, no later than one month after the

institution date of any *inter partes* review for which joinder is requested. The time period set forth in § 42.101(b) shall not apply when the petition is accompanied by a request for joinder.

37 C.F.R. § 42.122(b)(emphasis added).

IPR2016-01264 was instituted on December 21, 2016. Petitioner's Motion for Joinder was filed February 16, 2017, more than one month after institution of Case IPR2016-01264. The rule governing when a request for joinder can be made specifically requires that "[a]ny request for joinder must be filed . . . no later than one month after the institution date of any *inter partes* review for which joinder is requested." 37 C.F.R. § 42.122(b). In other words, joinder with an existing IPR proceeding is permitted only if the joinder request is made within one month of a decision to institute that IPR proceeding.

Global U.S. readily admits that its Motion for Joinder was filed more than one month after the institution date of IPR2016-01264. Thus, it is undisputed that the Motion for Joinder is untimely filed. Nothing prevented Global U.S. from filing a timely request to join IPR2016-01264. However, for its own reasons, it did not comply with the rules which require that a joinder request "**must** be filed ... no later than **one month** after the institution date..." 37 C.F.R. § 42.122(b) (emphasis added). Global U.S. did not provide reasonable justification for excusing its untimeliness.

The only reason that Global U.S. provides for filing the duplicative Petition is that TSMC might settle with Patent Owner. *See* Motion, pp. 3, 7 (“Global is willing to act as an “understudy” to TSMC, only assuming an active role in the event TSMC settles with IP Bridge.”). Global U.S. could have timely filed its petition as required by 37 C.F.R. § 42.122(b). Global filed a substantially similar motion for joinder, but then requested dismissal of the petition (Paper 14). Global U.S. has not provided any reason why it could not have timely filed a request for joinder, and having failed to timely do so, must bear the consequences.

Global U.S. asserts that (1) Joinder will not impact the Board’s ability to complete the review in a timely manner; (2) Joinder will promote efficiency by consolidating issues, avoiding duplicate efforts, and preventing inconsistencies; and (3) Joinder will not prejudice IP Bridge (Patent Owner). Motion, pp. 6-8. Patent Owner disagrees with these assertions.

With respect to the first assertion, joinder could impact the Board’s ability to complete the review in a timely manner. As noted above, neither the Petition nor the Motion for Joinder explains the relationship, if any, between Global and Global U.S., or why it was necessary to withdraw the Petition filed by Global and file another Petition by Global U.S. As such, there may be issues concerning the real party(ies) in interest, which will likely require discovery to resolve. As the Patent Owner’s discovery period has closed, and its Response in IPR2016-01264 was

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