

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

OLYMPUS CORPORATION, OLYMPUS AMERICA INC.
Petitioners

v.

PAPST LICENSING GmbH & Co. KG,
Patent Owner

Case No. IPR2017-01682
Patent No. 6,470,399 B1

**MOTION FOR JOINDER UNDER 35 U.S.C. § 315(c)
AND 37 C.F.R. §§ 42.22 AND 42.122(b)**

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*Motion for Joinder
Inter Partes Review of U.S. Patent No. 6,470,399*

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I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Petitioners Olympus Corporation and Olympus America Inc. (collectively, “Olympus”) respectfully request joinder pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b) of the concurrently filed Petition for *Inter Partes* Review of U.S. Patent No. 6,470,399 (“the ’399 Patent”) (“Olympus Petition”) with pending *Inter Partes* review, IPR2017-00443 (“Huawei/LG/ZTE IPR”), which was instituted by the Board on June 12, 2017. IPR2017-00443, Paper 7.

Joinder is appropriate because it will promote efficient resolution of the validity of the ’399 Patent, as the timely Olympus Petition involves the same ’339 Patent, covers the claims instituted in the Huawei/LG/ZTE IPR, and relies on the same arguments and evidentiary record.¹ No new grounds of unpatentability are asserted in the Olympus Petition and there will be, at most, a minimal impact on the trial schedule for the existing review. Olympus further identifies below procedures the Board may adopt to simplify briefing and discovery. *See, infra*, Section III.D. Therefore, joinder would neither complicate the issues nor unduly delay the existing schedule of IPR2017-00443.

¹ Olympus’ Exhibits are identical to the corresponding Huawei/LG/ZTE Exhibits and have been re-labeled as “Olympus” Exhibits.

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Olympus has notified counsel for Petitioners in the Huawei/LG/ZTE IPR regarding the subject of this motion and counsel has indicated they do not oppose this motion.²

II. STATEMENT OF MATERIAL FACTS

- In 2007, Papst Licensing GmbH & Co. KG (“Papst”) sued Olympus for infringement of the ‘399 Patent and related patents in the United States District Court for the District of Delaware. *Papst Licensing GmbH & Co. KG v. Olympus Corp., et al.*, C.A. No. 1:07-415 (DED), now consolidated in *In re: Papst Licensing Digital Camera Patent Litigation - MDL 1880*, C.A. No. 1:07-493 (DCD).
- On December 7, 2016, Huawei Device USA Inc., Huawei Device Co., Ltd., Huawei Device (Dongguan) Co., Ltd., Huawei Technologies Co., Ltd., Huawei Technologies USA, Inc., LG Electronics, Inc., LG Electronics U.S.A., Inc., LG Electronics Mobilecomm U.S.A., Inc., ZTE

² Counsel for Petitioners LG and ZTE confirmed that LG and ZTE do not oppose this motion. Counsel for Petitioner Huawei indicated that Huawei takes no position on this motion, and publicly available information indicates that Huawei and Patent Owner Papst recently reached a settlement in principle. *See Papst Licensing GmbH & Co., KG v. Apple Inc. et al.*, No. 15-cv-01095 (EDTX), Dkt. No. 363 (Joint Motion to Stay all Deadlines and Notice of Settlement in Principle).

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(USA) Inc, and ZTE Corporation (collectively, “ZTE *et al.*”), requested IPR of claims 1-8, 10-11, and 13-15 of the ’399 Patent under three grounds of unpatentability. *See* IPR2017-00443, Paper 2.

- On June 12, 2017 the Board instituted the Huawei/LG/ZTE IPR on all three of the requested grounds, covering all the challenged claims. *See id.*, Paper 7.
- The Olympus Petition that accompanies the present Motion for Joinder is filed within one month of the institution decision noted above in the Huawei/LG/ZTE IPR, and includes the same grounds of unpatentability that were instituted in the Huawei/LG/ZTE IPR.
- The Olympus Petition that accompanies the present Motion for Joinder and accompanying evidence are identical to the instituted Huawei/LG/ZTE IPR Petition, aside from modifying the procedural sections to identify Petitioners and real parties-in-interest, updating the listing of related cases, and identifying Olympus’ lead and backup counsel for the Petition.

III. STATEMENT OF REASONS FOR RELIEF REQUESTED

The Leahy-Smith America Invents Act (“AIA”) permits joinder of *Inter Partes* Review (“IPR”) proceedings. The statutory provision governing joinder of post-grant review proceedings is 35 U.S.C. § 315(c):

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