

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,

Petitioner,

v.

DANIEL L. FLAMM,

Patent Owner.

Case No. IPR2017-01747

U.S. Patent No. 5,711,849

Before CHRISTOPHER L. CRUMBLEY and KIMBERLY McGRAW,
Administrative Patent Judges

**INTEL CORPORATION, MICRON TECHNOLOGY, INC., AND
GLOBALFOUNDRIES U.S., INC.'S PARTIAL OPPOSITION TO
SAMSUNG ELECTRONICS CO., LTD.'S MOTION FOR JOINDER**

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I. INTRODUCTION

Samsung Electronics Co., Ltd. (“Samsung”) has moved to join *Inter Partes* Review No. IPR2017-00392, which the Board instituted based on a Petition jointly filed by Intel Corporation (“Intel”), Micron Technology, Inc. (“Micron”), and GLOBALFOUNDRIES U.S., Inc. (“Global”). Samsung seeks to join IPR2017-00392 as an “understudy,” purportedly with no active role, unless Intel, Micron, and Global withdraw from the trial the Board has instituted. While Intel, Micron and Global do not object to joinder if Samsung is limited to a truly passive role, they do object to the extent Samsung’s terms go beyond such a role.

Specifically, Samsung proposes to coordinate on consolidated filings and deposition examination. Because Samsung had the earliest deadline to petition for *inter partes* review of the ’849 patent, Intel, Micron and Global have carefully avoided such coordination to avoid any appearance of privity with Samsung. If Intel, Micron and Global change course now and begin coordination with Samsung, the Patent Owner may be prompted to litigate privity, an issue that has no bearing on the current record. Thus, unless Patent Owner waives the issue or the Board rules that coordinating with Samsung, if joined, will not justify raising a privity challenge, Intel, Micron and Global should not be required to coordinate with Samsung in the manner the motion suggests. Moreover, given that three

petitioners (Intel, Micron and Global) already are coordinating in IPR2017-00392, adding a fourth would create additional and unnecessary work.

In short, if Samsung is permitted to join, it should be limited to a purely passive role and should not file any papers, participate in discovery, present oral argument or otherwise actively participate unless Intel, Micron and Global withdraw. Alternatively, if the Board is inclined to permit Samsung to join on the terms set out in the motion, Intel, Micron and Global respectfully request an opportunity to speak with the Board about how to make clear that any required coordination with Samsung will not give rise to an allegation of privity further unnecessarily burdening the Board, the courts, and the parties.

II. STATEMENT OF MATERIAL FACTS

1. Patent Owner sued Samsung for alleged infringement of the '849 patent in July 2015 (the "Samsung Case"). *Flamm v. Samsung Elec. Co., Ltd.*, No. 1:15-cv-613-LY (W.D. Tex.).

2. Patent Owner did not sue Intel, Micron and Global for alleged infringement of the '849 patent until January 2016, approximately six months after filing the Samsung Case. *Lam Research Corp. v. Flamm*, No. 5:15-cv-01277-BLF, Dkts. 50, 58, 60 & 61 (N.D. Cal.).

3. In order to avoid any question regarding privity or the applicability of Samsung's earlier bar date under 35 U.S.C. § 315(a), Intel, Micron and Global

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