

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SAMSUNG ELECTRONICS CO., LTD.  
Petitioner

v.

DANIEL L. FLAMM,  
Patent Owner

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Case No. IPR2017-01750  
Patent No. RE40,264E

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**REPLY TO PARTIAL OPPOSITION TO  
PETITIONER'S MOTION FOR JOINDER**

Samsung Electronics Co., Ltd. (“Petitioner” or “Samsung”) submitted a Motion for Joinder (“the Samsung Motion”), concurrently with a Petition for *Inter Partes* Review (“the Samsung Petition”) of U.S. Patent No. RE40,264E (“the ’264 patent”), seeking joinder with *Intel Corp. et al v. Daniel L. Flamm*, IPR2017-00280 (“the Intel IPR” or “the Intel proceeding”), which the Board instituted on June 13, 2017. Patent Owner did not file a response to Samsung’s Motion. The petitioners in the Intel IPR, i.e., Intel Corporation, Micron Technology, Inc., and GLOBALFOUNDRIES U.S. Inc. (jointly the “Intel Petitioners”) submitted a partial opposition to Samsung’s Motion. (Paper No. 7, “Intel Opposition.”) This paper responds to the Intel Opposition. For the reasons indicated below, Samsung’s Motion should be granted.

The Intel Petitioners “do not object to joinder” so long as Samsung’s role in the joined proceedings is limited to a truly “passive role” but they do object if Samsung’s joinder goes beyond such a role. They also raise the possibility of an illusion of privity between the Intel Petitioners and Samsung. (*See generally* Opposition.) These concerns are unfounded.

For instance, the Intel Petitioners contend that Samsung seeks to have filings coordinated with the Intel Petitioners or seeks some deposition time. (Opposition at 3-4.) This, according to the Intel Petitioners, would create “additional and unnecessary work” for the Intel Petitioners and also gives Samsung an active role

in the proceeding. (*Id.*) These concerns are overstated because Samsung explicitly agreed to take an “understudy” role until the Intel Petitioners cease participation in this proceeding. (*See* Samsung Motion at 6-8.) The consolidation of filings as referenced in Samsung’s Motion simply refers to the fact that any paper filed by the Petitioners (including Samsung, if joined) that relates to issues common to all Petitioners will be filed as a consolidated filing. Moreover, the reference to deposition time in Samsung’s Motion was not a request for deposition time but simply an agreement to conditions set forth in other Board decisions. (*Id.* at 7, citing *Noven Pharmaceuticals, Inc. v. Novartis AG et al.*, IPR2014-00550, Paper No. 38 at 5 (Apr. 10, 2015).)<sup>1</sup> Through its motion, Samsung seeks no more than what the Board has allowed in similar situations. (*See generally* Motion.)

The Intel Petitioners’ final concern relates to the potential appearance of privity between the Intel Petitioners and Samsung if the Intel Petitioners were somehow forced to coordinate with Samsung in this proceeding. (Opposition at 4-5.) But the Intel Petitioners seem to acknowledge Samsung’s joinder does not

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<sup>1</sup> Regardless, the Board has allowed petitioners like Samsung to receive deposition time under certain conditions. *See, e.g., Dell, Inc. v. Network-1 Sec. Sols., Inc.*, IPR2013-00385, Paper No. 17 (July 29, 2013) (granting Dell, which was the party seeking joinder, deposition time after the original Petitioner completed its examination).

result in any such relationship. (*Id.* at 5.) Indeed, this concern is entirely unfounded, especially given Patent Owner did not file an opposition to Samsung's Motion, much less raise any potential privity issues.

Even though the concerns that the Intel Petitioners have raised in their opposition lack merit, Samsung further agrees to the following conditions (and any other reasonable conditions the Board deems necessary) to alleviate any concerns raised in the Intel Opposition. Specifically, Samsung agrees that until the Intel Petitioners otherwise agree or cease participation in the proceeding:

(1) Samsung will not participate in any filings or discovery unless the filing or discovery involves an issue solely relating to Samsung; and

(2) Samsung will not present oral argument unless oral argument concerns an issue solely relating to Samsung.

Again, Samsung seeks no more rights with its motion than what the Board has provided for in other similar situations and is willing to agree to any reasonable conditions the Board deems appropriate. As such, Samsung respectfully requests that the Board grant its motion and join it to the Intel IPR.

Respectfully submitted,

Dated: August 14, 2017

By: /Naveen Modi/

Naveen Modi (Reg. No. 46,224)  
Counsel for Petitioner Samsung

**CERTIFICATE OF SERVICE**

I hereby certify that on August 14, 2017, a copy of the foregoing REPLY TO PARTIAL OPPOSITION TO PETITIONER'S MOTION FOR JOINDER was served by electronic means on Patent Owner's counsel at the following correspondence address of record:

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A copy of the reply was also served via electronic mail on the following counsel for Petitioners in IPR2017-00280:

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