

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG Electronics, Inc., LG Electronics U.S.A. Inc., LG Electronics
Mobilecomm U.S.A. Inc., LG Electronics Mobile Research U.S.A.
LLC, and LG Electronics Alabama, Inc.
Petitioner

v.

Fundamental Innovation Systems International LLC,
Patent Owner

Case IPR2018-00461
U.S. Patent No. 8,624,550

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

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I. STATEMENT OF RELIEF REQUESTED

LG Electronics, Inc., LG Electronics U.S.A. Inc., LG Electronics Mobilecomm U.S.A. Inc., LG Electronics Mobile Research U.S.A. LLC, and LG Electronics Alabama, Inc. (collectively “LGE” or “Petitioners”) respectfully submit this Motion for Joinder together with a Petition for *Inter Partes* Review of U.S. Patent No. 8,624,550 (“LGE’s Petition”). Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b), LGE requests *inter partes* review and joinder with *ZTE (USA) Inc., Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc., v. Fundamental Innovation Systems International LLC*, IPR2018-00111 (“the ZTE/Samsung IPR”), which was filed on October 26, 2017. LGE’s Petition is substantively identical to the petition in the ZTE/Samsung IPR—challenging the same claims of the ’550 Patent on the same grounds while relying on the same prior art, arguments, and evidence. This Motion for Joinder and accompanying Petition are timely, being filed before a decision instituting trial in the ZTE/Samsung IPR. Counsel for LGE has conferred with petitioner’s counsel in the ZTE/Samsung IPR, and this Motion for Joinder is not opposed.

Joinder is appropriate here because (i) LGE’s Petition is substantively identical to the petition in the ZTE/Samsung IPR and (ii) LGE agrees to an “understudy role” and relies upon the same expert declaration as relied upon in the

ZTE/Samsung IPR, simplifying briefing and discovery. Accordingly, joinder will provide for a just, speedy, and inexpensive determination of related proceedings.

Accordingly, LGE respectfully requests that the Board grant this Motion for Joinder.

II. STATEMENT OF MATERIAL FACTS

1. The owner of the '550 Patent, Fundamental Innovation Systems International LLC ("FISI"), sued LGE alleging infringement of the '550 Patent in the United States District Court for the Eastern District of Texas.

2. LGE was served with FISI's complaint on January 18, 2017.

3. On October 26, 2017, ZTE (USA) Inc., Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc., (collectively "ZTE"), which had also been served with a complaint alleging infringement of the '550 Patent, timely filed a Petition for *inter partes* review challenging claims 1-18 of the '550 Patent. *See ZTE (USA) Inc., et al. v. Fundamental Innovation Systems International LLC*, IPR2018-00111, Paper 1 (PTAB Oct. 26, 2017).

4. LGE's Petition and this motion are being filed before a decision on institution of the ZTE/Samsung IPR.

III. STATEMENT OF REASONS FOR REQUESTED RELIEF

A. Legal Standards

The Board has authority under 35 U.S.C. § 315(c) to join a party who files a

proper *inter partes* review petition to a previously filed *inter partes* review proceeding. This authority is discretionary. 35 U.S.C. § 315(c); 37 C.F.R. § 42.122. The moving party has the burden of proof and should: (1) set forth the reasons why joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; (3) explain what impact (if any) joinder would have on the trial schedule for the existing review; and (4) address specifically how briefing and discovery may be simplified. *Dell Inc. v. Network-1 Sec. Solutions, Inc*, IPR2013-00385, Paper 17 at 3-4 (PTAB July 29, 2013).

The legislative history of the AIA suggests that the joinder may be granted as a matter of right where the later petitioner files an identical petition with identical grounds of unpatentability. *See* 157 CONG. REC. S1376 (daily ed. Mar. 8, 2011) (statement of Sen. Kyl) (“The Office anticipates that joinder will be allowed *as of right*-if an *inter partes* review is instituted on the basis of a petition, for example, a party that files an identical petition will be joined to that proceeding, and thus allowed to file its own briefs and make its own arguments.”) (emphasis added).

B. LGE's Motion for Joinder is Timely

A Motion for Joinder is timely if the moving party files within one month of institution of the *inter partes* review for which joinder is requested. 37 C.F.R.

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