

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DAIMLER AG,
Petitioner

v.

BLITZSAFE TEXAS,

Patent Owner

**REPLY IN FURTHER SUPPORT OF MOTION FOR JOINDER UNDER
35 U.S.C. § 315(c) AND 37 C.F.R. §§ 42.22 AND 42.122(b)
TO INTER PARTES REVIEW OF IPR2018-00544**

Case No. IPR2018-01209

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Patent Owner (“PO”) proffers several arguments in opposition to Petitioner’s motion for joinder. PO’s primary complaint appears to be that Petitioner intends to take a “limited-but-active” role in the IPR2018-00544 (“the ’544 proceeding”). This is incorrect—Petitioner will take a limited role in the petition as required by the rules, and commits to a secondary role to Jaguar, petitioner in the ’544 proceeding. Jaguar will be lead counsel and will speak for the parties. Petitioner will not seek anything not provided by the rules—Petitioner will not seek additional or separate briefing, additional discovery, separate depositions, and will commit to the schedule in that case. On this basis alone, joinder is appropriate.

PO also argues that the multiple IPRs filed against the challenged patent somehow weighs against joinder. This, however, is irrelevant, and PO cites no authority to the contrary. Indeed, the only case PO cites on this point—*General Plastic*—simply does not apply here, as *General Plastic* did not deal with joinder (and, as set forth in the Petition, the *General Plastic* factors weigh in favor of institution). *See* ’544 Petition, Paper 2, at Section VIII.

PO also argues that joinder is premature as the underlying proceeding has not been instituted. *Opp.* at 1-2. However, the Board *routinely* grants joinder in such circumstances. PO further argues that despite the fact that the two proceedings are substantially identical, “commonality is not a legitimate reason for joinder,” and Petitioner has failed to identify any other legitimate reason for joinder. *Id.* at 4. As

explained in the opening brief, each of the Board's factors counsel for joinder. Mot. at 5. Specifically, both proceedings involve the same grounds of unpatentability, challenge the same claims, and rely upon the same prior art, and joinder will aid in and simplify briefing, discovery and the trial schedule. *Id.* at 5-9.

I. JOINDER WILL EFFICIENTLY RESOLVE THE TWO PROCEEDINGS AND NOT IMPACT THE ISSUES OR PREJUDICE THE PARTIES

PO argues that Petitioner has failed to identify a legitimate reason for joinder. Opp. at 4-5.¹ This is incorrect. Joinder in this case would increase efficiency and conserve Board and party resources; it would not prejudice PO. The Board considers four factors in deciding whether to exercise its discretion to grant joinder: (1) the reasons why joinder is appropriate; (2) whether the new petition presents any new grounds of unpatentability; (3) what impact, if any, joinder would have on the trial schedule for the existing review; and (4) how briefing and discovery may be simplified. *Perfect World Entm't, Inc., v. Uniloc USA, Inc. et al.*, IPR2015-01026, Paper 10 at 4 (P.T.A.B. Aug. 3, 2015). Each of these factors counsel for joinder and provide a legitimate basis for such a ruling.

A. Joinder is Appropriate and Petitioner Presents No New Grounds

¹ PO also argues that if the Board denies institution of the '544 Petition, joinder and institution of the present Petition should be denied as well. Opp. at 5.

As admitted by the PO, this Petition involves the same patent, challenges the same claims, and relies on the same prior art, arguments and expert declaration presented in the '544 proceeding. Opp. at 4. Importantly, the Petition does not raise new grounds of unpatentability and relies upon the same grounds from the '544 Petition—*i.e.*, it is substantively identical to the '544 Petition. Mot. at 5-6. Indeed, the substantive challenges presented in the Petition are recited *verbatim* from the '544 Petition and rely upon the *same supporting expert declaration*. *Id.* As Petitioner's present Petition and the '544 Petition are substantively identical, joining this proceeding with the '544 proceeding is appropriate and allows the Board to efficiently resolve the instituted grounds in a single proceeding.²

B. Joinder Will Not Negatively Impact the '544 Trial Schedule & Will Simplify Briefing and Discovery

As the Petition is substantively identical to the '544 Petition, there are no new issues and PO will not be required to file additional responses. Also, since the present Petition relies on the same expert declaration, only a single deposition is

² See *Sierra Wireless America, Inc. et al. v. M2M Solutions LLC*, IPR2016-01073, Paper 17 at 8 (P.T.A.B. Sept. 29, 2016) (“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.”).

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