Paper No. 2

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRICELINE.COM LLC AND BOOKING.COM B.V.
Petitioners

v.

DDR HOLDINGS, LLC
Patent Owner

U.S. Patent 9,639,876

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

TABLE OF AUTHORITIES

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I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Priceline.com LLC and Booking.com B.V. ("Petitioners") respectfully submit this Motion for Joinder together with a Petition for *Inter Partes* Review of U.S. Patent No. 9,639,876 (the "'876 Patent"). Petitioners respectfully request their Petition for *Inter Partes* Review be granted and joined pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. §§ 42.22 and 42.122(b) with the petition for *inter partes* review (the "Shopify Petition") filed by Shopify, Inc. concerning the '876 Patent: *Shopify, Inc. v. DDR Holdings, LLC*, IPR2018-01008 (the "'008 IPR"), in which trial was instituted on Grounds 1, 2, and 3 on November 15, 2018. Petitioners' Motion for Joinder and accompanying Petition are being filed within one month of the decision instituting trial in the '008 IPR, and are therefore timely. 37 C.F.R. § 42.122(b)

Petitioners' Petition relies on the references cited and follows the arguments raised in the Shopify Petition, and is substantively identical to the Shopify Petition. The present Petition includes identical grounds as those presented in the Shopify Petition and therefore would create no additional burden for the Board, Shopify, or Patent Owner if joined. Joinder would therefore lead to an efficient resolution of the validity of the '876 Patent.

Counsel for Petitioners and counsel for Shopify met and conferred as to the level of cooperation between Shopify and Petitioners that will be maintained if Petitioners' motion for joinder is granted. Petitioners stipulate that if joinder is grant-

ed, Petitioners will cooperate with Shopify in the joined proceeding, whether at hearings, at depositions, in filings, or otherwise, as outlined below. Unless Shopify is terminated from the proceedings, Petitioners will proceed in a limited "understudy" role. Joinder will not impact the trial schedule because the proceeding based on the Shopify Petition is in its early stages.

The Board has granted joinder in other proceedings when presented with the fact pattern described herein. For example, the Board recently joined Celltrion, Inc. to an instituted IPR where Pfizer, Inc. was the Petitioner. *Celltrion, Inc., v. Genentech, Inc.*, IPR2018-01019, Paper 11, (PTAB Oct. 30, 2018). In that case, Pfizer had previously filed a petition for inter partes review of the patent at issue, and its petition had been instituted. Subsequently, Celltrion filed a petition with a Motion for Joinder to Pfizer's IPR2017-01923. Pfizer and Celltrion had agreed that Celltrion would take an understudy role to Pfizer and no deadlines in the original IPR were changed. Further, Celltrion agreed to not rely on expert testimony provided in support of Celltrion's IPR petition unless Pfizer was terminated from the proceeding before Pfizer's expert was deposed. The Board granted joinder, finding that doing so did not increase the burden on either the patent owner or the Board.

Here, Petitioners and Shopify have agreed to a similar arrangement, with Shopify taking the lead role and Petitioners taking the understudy role. Further,

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