

Filed: February 11, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG ELECTRONICS INC.
Petitioner

v.

CYWEE GROUP LTD.
Patent Owner

Case IPR2019-00560
Patent No. 8,552,978

OPPOSITION TO PETITIONER'S MOTION FOR JOINDER TO *INTER PARTES* REVIEW IPR2018-01257

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I. INTRODUCTION

LG Electronics Inc. (“Petitioner” or “LG”) has filed a petition against CyWee Group Ltd. (“CyWee” or “Patent Owner”) for *inter partes* review of U.S. Patent No. 8,552,978 (the “’978 Patent”) concurrently with a Motion for Joinder (the “Motion”) with *Google LLC v. CyWee Group Ltd.*, IPR2018-01257 (the “Google IPR”). The Google IPR was instituted on December 11, 2018, challenging claims 10 and 12 of the ’978 Patent.

LG is one of four parties now seeking joinder with the Google IPR. The other parties are Samsung Electronics Co., Ltd. (“Samsung”); ZTE (USA), Inc. (“ZTE”); and Huawei Device USA, Inc., et al. (“Huawei”). All of these parties are also parties to infringement actions before various district courts involving the ’978 Patent. Petition, Paper 1 at 5-6. LG has challenged the validity of the ’978 Patent in *CyWee Group Ltd. v. LG Elec., Inc. et al.*, Civil Action No. 3:17-cv-01102 (S.D. Cal.) (the “District Court Action”).

The District Court Action was filed on May 31, 2017. District Court Action, Complaint, Doc. 1. LG is nearly eight months past the deadline for which it could have filed a petition for its own IPR pursuant to 37 C.F.R. § 42.101(b). The District Court Action was stayed on January 23, 2019, pending the resolution of the Google IPR. During the time since LG was first served with the complaint in

the District Court Action, LG has not indicated any interest in challenging the validity of the '978 Patent by IPR, opting instead to pursue an invalidity defense in the District Court Action. Moreover, LG never identified U.S. Patent App. Pub. 2004/0095317 to Zhang (“Zhang”) in its invalidity contentions in the District Court Action. These contentions were filed *after* the Google IPR, when LG would have been made aware of that reference. LG should not be permitted, through joinder, to now rely on a prior art reference it decided was irrelevant in the first instance.

Allowing joinder here will severely prejudice the Patent Owner; will introduce new issues requiring additional discovery; will impact the schedule of this proceeding and related proceedings; and will waste the time, effort, and resources of the Board, the parties, and the federal district courts. Accordingly, LG’s Motion must be denied.

II. STANDARD

The Board’s decision to grant joinder is discretionary. *Unified Patents, Inc. v. PersonalWeb Tech., LLC, et al.*, IPR2014-00702, Paper 12 at 2-3 (PTAB July 24, 2014); 35 U.S.C. § 315(c); 37 CFR § 42.122. This discretionary determination is made on a case-by-case basis, taking into account the particular facts of each case, substantive and procedural issues, and other considerations. *Unified Patents, Inc. v. PersonalWeb Tech., LLC, et al.*, IPR2014-00702, Paper 12 at 3. When determining whether to grant a motion for joinder, the Board considers many factors including the timing and impact of

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