

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUAWEI DEVICE USA, INC., HUAWEI DEVICE CO. LTD., HUAWEI
TECHNOLOGIES CO. LTD., HUAWEI DEVICE (DONGGUAN) CO. LTD.,
HUAWEI INVESTMENT & HOLDING CO. LTD., HUAWEI TECH.
INVESTMENT CO. LTD., HUAWEI DEVICE (HONG KONG) CO. LTD.

Petitioners

v.

CYWEE GROUP LTD.
(record) Patent Owner

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

**MOTION FOR JOINDER TO IPR2018-01257
UNDER 37 C.F.R. §§ 42.22 AND 42.122(b)**

Petitioners, Huawei Device USA, Inc., Huawei Device Co. Ltd., Huawei Technologies Co. Ltd., Huawei Device (Dongguan) Co. Ltd., Huawei Investment & Holding Co. Ltd., Huawei Tech. Investment Co. Ltd., Huawei Device (Hong Kong) Co. Ltd. (“Huawei” or “Petitioners”) submit concurrently herewith a Petition for *Inter Partes* Review of U.S. Patent No. 8,552,978 (“Petition”). Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b), Petitioners respectfully request that their Petition be instituted and joined with pending *inter partes* review IPR2018-01257 (“the Google IPR”).

Huawei’s motion for joinder and accompanying Petition are timely under 37 C.F.R. §§ 42.22 and 42.122(b), as they are submitted within one month of December 11, 2018, the date that the Google IPR was instituted. Google IPR, Paper 8.

Joinder is appropriate because it will promote efficient resolution of the issues without affecting scheduling for the pending proceeding. The Petition challenges the same claims instituted in the Google IPR, and relies on the same substantive arguments and substantive evidentiary record. No new grounds of unpatentability are asserted in the Petition and there will be no impact on the trial schedule for the existing review. Therefore, joinder would neither complicate the issues nor unduly delay the Google IPR.

Absent joinder, Huawei may be prejudiced as it has a significant interest in the underlying validity determination at issue in this proceeding, given the potential impact on litigation proceedings between CyWee and Huawei involving the same patent. Joinder would protect Huawei's interests and avoid the potential prejudice to Huawei that could result from a settlement between CyWee and Google.

Huawei has notified counsel for Petitioner in the Google IPR regarding the subject of this motion, and counsel does not oppose Huawei's present motion.

BACKGROUND AND RELATED PROCEEDINGS

CyWee is the owner of U.S. Patent No. 8,552,978 ("the '978 Patent"). The '978 Patent is asserted against Huawei in *CyWee v. Huawei Technology, Inc., et al.*, 2-17-cv-00495 (E.D. Tex.) ("the Underlying Litigation").

The '978 Patent was also asserted in the following actions:

- *Cywee Group Ltd. v. Google, Inc.*, Case No. 1-18-cv-00571, (D. Del.);
- *Cywee Group Ltd. v. ZTE Corporation et al.*, Case No. 3-17-cv-02130, (S.D. Cal.);
- *Cywee Group Ltd. v. HTC Corporation et al.*, Case No. 2-17-cv-00932, (W.D. Wash.);
- *Cywee Group Ltd. v. Motorola Mobility LLC*, Case No. 1-17-cv-00780, (D. Del.);

- *Cywee Group Ltd. v. LG Electronics, Inc. et al.*, Case No. 3-17-cv-01102, (S.D. Cal.);
- *Cywee Group Ltd. v. Samsung Electronics Co. Ltd. et al.*, Case No. 2-17-cv-00140, (E.D. Tex.);
- *Cywee Group Ltd. v. Apple Inc.*, Case No. 4-14-cv-01853, (N.D. Cal.).

The Google IPR, Case IPR2018-01257, was filed by Google on June 14, 2018 and, like the instant Petition, challenges claims 10 and 12 of the '978 Patent. On December 11, 2018, the Board instituted the Google IPR. Ex. 1012. The '978 patent is also at issue in *Samsung Electronics Co., Ltd. v. Cywee Group Ltd.*, IPR2019-00534, in which that petitioner also requested to join the Google IPR. Petitioners are also concurrently filing a petition challenging claims 1 and 3-5 of U.S. Patent No. 8,441,438 along with a motion to join *Google LLC v. Cywee Group Ltd.*, IPR2018-01258, which the Board instituted on December 11, 2018.

I. STATEMENT OF REASONS FOR RELIEF REQUESTED

A. Legal Standard

The Leahy–Smith America Invents Act (AIA) permits joinder of IPR proceedings. *See generally* Pub. L. No. 112-29, 125 Stat. 284 (2011). The statutory provision governing IPR joinder, 35 U.S.C. § 315(c), reads:

(c) JOINDER.—If the Director institutes an inter partes review, the Director, in his or her discretion, may join as a party to that inter partes review any person who properly files a

petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an inter partes review under section 314.

Motions for joinder should: (1) set forth 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. *See Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper 15 at 4 (PTAB April 24, 2013); *see also Samsung Elecs. Co. v. Unifi Sci. Batteries, LLC*, IPR2013-00236, Paper 22 at 3 (PTAB Oct. 17, 2013). Each of these factors supporting joinder are present in this motion and are discussed in detail below.

B. Joinder Is Appropriate

Joinder is appropriate here because it will not “unduly complicate or delay” the Google IPR. *SAP America Inc. v. Clouding IP, LLC*, IPR2014-00306, Paper 13 at 4 (PTAB May 19, 2014). Indeed, there is “a policy preference for joining a party that does not present new issues that might complicate or delay an existing proceeding.” *Enzymotec Ltd. v. Neptune Techs. & Bioresources, Inc.*, IPR2014-00556, Paper 19 at 6 (PTAB July 9, 2014).

The Board has authority to join a properly-filed IPR petition to an IPR proceeding. *See* 35 U.S.C. § 315(c). The Board has found that joinder is

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