

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MARVELL SEMICONDUCTOR, INC.,
Petitioner,

v.

UNIOLOC 2017 LLC,
Patent Owner.

Case IPR2019-01349
Patent 7,016,676 B2

Before JAMESON LEE, KEVIN F. TURNER, and
MICHELLE N. WORMMEESTER, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

ORDER
On Motion to Consolidate Schedules
37 C.F.R. § 42.5

Introduction

On July 22, 2019, Petitioner filed a Petition to institute *inter partes* review of claims 1, 2, and 5 (“the challenged claims”) of U.S. Patent No. 7,016,676 B2 (Ex. 1001, “the ’676 patent”). Paper 2 (“Pet.”). Concurrent with filing of the Petition, Petitioner filed a “Motion for Consolidation pursuant to 35 U.S.C. § 315(d) and 37 C.F.R. § 42.122(a).” Paper 3 (hereinafter “Motion”). Within the Motion, Petitioner explains its requested relief as follows: “Petitioner Marvell Semiconductor Inc. (‘Marvell’ respectfully requests consolidation of schedules of this IPR (‘Marvell IPR’) with the *inter partes* reviews concerning the same patent in *Microsoft Corporation v. Uniloc 2017 LLC*, Case Nos. IPR2019-01116 and IPR2019-01125 (collectively, the ‘Microsoft IPRs’).” *Id.* at 1.

Petitioner seeks only synchronization of the trial schedule, if review is instituted here, with the trial schedules of IPR2019-01116 and IPR2019-1125, rather than actual consolidation of proceedings in terms of substantive issues, filings, and/or arguments, or discovery. That is confirmed through the following representation in the Motion: “Marvell emphasizes that it is only requesting consolidation for the purposes of synchronizing the schedules of the Marvell IPR with the Microsoft IPRs. Marvell is not requesting joint briefing or depositions in conjunction with the Microsoft IPRs.” *Id.* at 2.

Marvell indicates that it seeks to avoid the final written decisions in the Microsoft IPRs to issue first, prior to issuance of any final written decision in the proceeding. *Id.* at 1–2. Marvell explains

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that that would eliminate a potential estoppel argument under 35 U.S.C. § 315(e)(1) by Patent Owner who may assert, incorrectly, that Petitioner is a real party in interest or privy in the Microsoft IPRs. *Id.*

Discussion

On November 27, 2019, we declined institution of *inter partes* review in IPR2019-01125. IPR2019-01125, Paper 8. There is no ongoing trial in IPR2019-01125. In IPR2019-01116, we instituted *inter partes* review on December 4, 2019. IPR2019-01116, Paper 9.

Petitioner does not explain how, with a two month gap in the relative dates of institution of trial between this proceeding and IPR2019-01116, any trial schedule for this proceeding reasonably can be synchronized with the ongoing trial schedule in IPR2019-01116. We decline to give Patent Owner less than one month for filing the Patent Owner Response in this proceeding. Also, depriving the Patent Owner of a potential argument, although a meritless argument from the perspective of Petitioner, is not a proper basis for setting the trial schedule in a certain way. The Patent Owner should not be deprived of an opportunity to make an argument by adjusting the schedule for that purpose.

ORDER

It is

ORDERED that the Motion is *denied*.

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