

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,

Petitioner,

v.

BELL NORTHERN RESEARCH, LLC,

Patent Owner.

Patent No. 7,039,435

**PETITIONER'S NOTICE
REGARDING MULTIPLE PETITIONS**

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I. INTRODUCTION

Petitioner is concurrently filing two petitions challenging different claims of U.S. Patent No. 7,039,435 (“the ’934 patent”). “To aid the Board in determining” why “more than one petition is necessary,” Petitioner provides the information below. *See* PTAB Consolidated Trial Practice Guide (“TPG”) (November 2019) at 59-60.

II. RANKING

While both petitions are meritorious and justified as explained below, Petitioner requests that the Board consider the petitions in the following order:¹

Rank	Petition	Challenged Claims	Grounds
1	Petition 1	1-3 and 6	<u>Ground 1:</u> Claims 1-3 Anticipated by Baiker <u>Ground 2:</u> Claims 1-3 and 6 Obvious over Baiker and Werling <u>Ground 3:</u> Claims 1-3 Anticipated by Irvin <u>Ground 4:</u> Claims 1-3 and 6 Obvious over Irvin and Myllymäki

¹ While Petitioner is providing this ranking per the PTAB’s guidance in the consolidated TPG, Petitioner believes ranking in this instance is inappropriate and/or unnecessary since each petition addresses a different claim. That is, there is no overlap amongst the challenged claims in the two petitions.

			<p><u>Ground 5</u>: Claims 1-3 Obvious over Bodin and Irvin</p> <p><u>Ground 6</u>: Claim 6 Obvious over Bodin, Irvin, and Myllymäki</p>
2	Petition 2	8	<p><u>Ground 1</u>: Claim 8 Anticipated by Baiker</p> <p><u>Ground 2</u>: Claim 8 Obvious over Baiker and Werling</p> <p><u>Ground 3</u>: Claim 8 Anticipated by Irvin</p> <p><u>Ground 4</u>: Claim 8 Obvious over Irvin and Myllymäki</p> <p><u>Ground 5</u>: Claim 8 Obvious over Bodin and Irvin</p>

III. DIFFERENCES BETWEEN THE PETITIONS, WHY THEY ARE MATERIAL, AND WHY ALL SHOULD BE INSTITUTED

As indicated in Petition 1, it is being submitted concurrently with a motion for joinder. Specifically, Petitioner requests institution and joinder of Petition 1 with *ZTE (USA), Inc. v. Bell Northern Research, LLC*, IPR2019-01365 (“the ZTE IPR” or “the ZTE proceeding”), which the Board instituted on February 11, 2020. Petition 1 is substantially identical to the petition in the ZTE IPR; it contains the same grounds (based on the same prior art combinations and supporting evidence) against the same claims (claims 1-3 and 6). Petition 2 challenges a single claim (claim 8) which is not challenged in the ZTE IPR and thus not included in Petition 1. Thus, the current circumstances are consistent with the guidance in the consolidated TPG,

which states that “the Board recognizes that there may be circumstances in which more than one petition may be necessary.” *See* PTAB Consolidated TPG at 59-60.

In any event, the petitions are materially different because each petition addresses a different claim. And the Board’s decision with respect to the patentability of the challenged claims in each petition would be materially different because the decision would address the validity of a different claim in each case. Thus, denying one petition over the other would leave one or more challenged claims unaddressed.

The fact that another IPR petition involving claim 8 of the ’435 patent is pending in *LG Electronics, Inc. v. Bell Northern Research, LLC*, IPR2020-00319 (“the LG IPR” or “the LG proceeding”) does not weigh against institution of Petition 2. The LG IPR involves a different petitioner and different prior art combinations. Moreover, there has been no preliminary response filed or institution decision issued in the LG IPR. Thus, Petitioner could not have used patent owner’s arguments or the Board’s decision as a roadmap to formulate its challenge to claim 8. Indeed, given that Petitioner cannot predict whether the LG IPR will be instituted at this juncture (and thus give Petitioner an opportunity to consider whether to join the LG IPR), Petitioner has been diligent in filing Petition 2 prior to the filing of any preliminary response in the LG IPR to avoid any implication that Petitioner is benefiting from the developments in the LG IPR.

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