

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HTC CORPORATION and HTC AMERICA, INC.,
Petitioners

v.

ANCORA TECHNOLOGIES, INC.,
Patent Owner

Case IPR2021-00570
Patent No. 6,411,941

**PATENT OWNER ANCORA'S OPPOSITION TO
PETITIONERS' MOTION FOR JOINDER**

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Table of Contents

	Page
I. INTRODUCTION	1
II. BACKGROUND	2
III. PETITIONER’S MOTION FOR JOINDER SHOULD BE DENIED FOR MOOTNESS OR BECAUSE IT WILL UNDULY DELAY THE ORIGINAL PROCEEDING.....	5
A. The Board Should Terminate the Original Proceeding, Which Would Moot this Motion.....	5
B. Undue Delay in the Original Proceedings Alternatively Requires Denying Petitioners’ Motion for Joinder	8
IV. THE BOARD SHOULD EXERCISE ITS DISCRETION TO DENY THIS PETITION	11
A. The <i>General Plastic</i> Factors Favor Discretionary Denial of HTC’s Joinder Petition.....	11
1. Factor 1: Whether the Same Petitioner Previously Filed a Petition Directed to the Same Claims of the Same Patent, and Factor 3: Whether at the Time of Filing of the Second Petition the Petitioner Already Received the Patent Owner’s Preliminary Response to the First Petition or Received the Board’s Decision on Whether to Institute Review in the First Petition	12
2. Factor 2: Whether at the Time of Filing of the First Petition the Petitioner Knew of the Prior Art Asserted in the Second Petition or Should Have Known of It	12
3. Factor 4: The Length of Time That Elapsed Between the Time the Petitioner Learned of the Prior Art Asserted in the Second Petition and the Filing of the Second Petition	13
4. Factor 5: Whether the Petitioner Provides Adequate Explanation for the Time Elapsed Between the Filings of Multiple Petitions Directed to the Same Claims of the Same Patent.....	13

5.	Factor 6: The Finite Resources of the Board	14
6.	Factor 7: The Requirement Under 35 U.S.C. § 316(a)(11) to Issue a final Determination Not Later Than 1 Year After the Date on Which the Director Notices Institution of Review.....	15
7.	In Total, the <i>General Plastic</i> Factors Weigh Against Institution	15
B.	The <i>Fintiv</i> Factors Favor Discretionary Denial of HTC’s Petition.....	15
1.	Factor 1: Whether a Stay Exists or Is Likely to Be Granted If a Proceeding Is Instituted.....	16
2.	Factor 2: Proximity of the Court’s Trial Date to the Board’s Projected Statutory Deadline	17
3.	Factor 3: Investment in the Parallel Proceeding by the Court and Parties	18
4.	Factor 4: Overlap Between Issues Raised in the Petition and in the Parallel Proceeding	19
5.	Factor 5: Whether the Petitioner and the Defendant in the Parallel Proceeding Are the Same Party	20
6.	Factor 6: Other Circumstances That Impact the Board’s Exercise of Discretion, Including the Merits	20
7.	In Total, the <i>Fintiv</i> Factors Weigh Against Institution.....	21
V.	CONCLUSION.....	21

Table of Exhibits

Exhibit No.	Description
Ex. 2001	RESERVED
Ex. 2002	RESERVED
Ex. 2003	RESERVED
Ex. 2004	Apple Inc.'s N.D. Cal. Patent L.R. 3-3 Disclosures (Invalidity Disclosures)
Ex. 2005	Defendants HTC America, Inc. and HTC Corporation's Preliminary Non-Infringement and Invalidity Contentions
Ex. 2006	RESERVED
Ex. 2007	Email requesting permission to file motion to terminate
Ex. 2008	Ancora v. Samsung Fourth Amended Scheduling Order
Ex. 2009	Expert Report of Suzanne Barber Regarding Invalidity of U.S. Patent No. 6,411,941
Ex. 2010	Ancora v. HTC Order Setting Patent Case Schedule
Ex. 2011	Samsung and LG Invalidity Contentions and Select Invalidity Charts
Ex. 2012	Ancora v. HTC Affidavit of Service
Ex. 2013	IAM Article Judge Albright Interview
Ex. 2014	VLSI v. Intel Jury Verdict Form
Ex. 2015	Ancora v. LG Rebuttal Report of David Martin

Table of Authorities

	Page
Cases	
<i>Aerohive Networks, Inc. v. Chrimar Sys., Inc.</i> , IPR2016-01757, paper 3 (PTAB Sep. 8, 2016).....	6
<i>Ancora Techs., Inc. v. Apple, Inc.</i> , 774 F.3d 732 (Fed. Cir. 2014)	3, 13
<i>Ancora Techs., Inc. v. HTC Am., Inc.</i> , 908 F.3d 1343 (Fed. Cir. 2018)	4, 18
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, paper 11 (PTAB Mar. 20, 2020)	16
<i>Apple Inc. v. Uniloc 2017 LLC</i> , IPR2020-00854, paper 9 (PTAB Oct. 28, 2020)	11, 12, 13
<i>Continental Intermodal Group-Trucking LLC v. Sand Revolution LLC</i> , Case No. 7:18-cv-00147, Dkt. 105 (W.D. Tex. July 22, 2020).....	16
<i>Cuozzo Speed Techs., LLC v. Lee</i> , 136 S. Ct. 2131 (2016).....	15
<i>Dell Inc. v. Chrimar Sys., Inc.</i> , IPR2016-00569, paper 40 (PTAB Jan. 20, 2017).....	6
<i>General Plastic Co., Ltd. v. Canon Kabushiki Kaisha</i> , IPR2016-01357, paper 19 (PTAB Sep. 6, 2017).....	11
<i>HTC Corp. v. Ancora Techs. Inc.</i> , CBM2017-00054, paper 1 (PTAB Dec. 1, 2017).....	3, 4
<i>HTC Corp. v. Ancora Techs. Inc.</i> , CBM2017-00054, paper 7 (PTAB Dec. 1, 2017).....	4, 12
<i>Intel Corp. v. VLSI Tech. LLC</i> , IPR2020-00583, paper 22 (PTAB Oct. 5, 2020)	18
<i>Lenovo (U.S.) Inc. v. Neodron Ltd.</i> , IPR2020-00729, paper 9 (PTAB Aug. 3, 2020).....	6
<i>LG Elec., Inc. v. Cellular Commc'ns Equip. LLC</i> , IPR2016-00711, paper 7 (PTAB May 13, 2016).....	8

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.