

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

XILINX, LLC,
Petitioner,

v.

FG SRC LLC,
Patent Owner

Case IPR2021-00633
Patent No. 7,149,867

PETITIONER'S MOTION FOR JOINDER

I. STATEMENT OF PRECISE RELIEF REQUESTED

Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b), Petitioner Xilinx, LLC moves for joinder with the *inter partes* review instituted against U.S. Patent No. 7,149,867 (“the ’867 Patent”) in *Intel Corporation, v. FG SRC LLC*, IPR2021-01449 (“the 1449 Proceeding”). This motion is timely filed within one month of institution in the 1449 Proceeding. Xilinx has consulted with counsel for Intel Corporation, the current petitioner in the 1449 Proceeding, and Intel does not does not oppose Xilinx’s request for joinder.

Xilinx requests institution of the Petition for *inter partes* review filed concurrently herewith. Xilinx’s Petition is materially the same as the petition filed in the 1449 Proceeding. Xilinx’s Petition and the petition in the 1449 Proceeding challenge the same claims, on the same grounds, and rely on the same prior art and evidence, including an identical declaration from the same expert.¹

Xilinx agrees to proceed solely on the grounds, evidence, and arguments advanced, or that will be advanced, in the 1449 Proceeding as instituted. Xilinx’s Petition therefore warrants institution under 35 U.S.C. § 314, and 35 U.S.C. § 315(c) permits Xilinx’s joinder to the instituted 1449 Proceeding.

¹ The declaration is an exact duplicate of the declaration in the 1449 Proceeding.

Further, upon joining the 1449 Proceeding, Xilinx will act as an “understudy” and will not assume an active role unless Intel ceases to participate in the 1449 Proceeding. Intel will maintain the lead role in the proceeding so long as it remains in the proceeding. These limitations will avoid lengthy and duplicative briefing. Xilinx also will not seek additional depositions or deposition time. Xilinx agrees to the foregoing conditions even in the event that other IPRs filed by other, third-party petitioners are joined with the 1449 Proceeding. Accordingly, the proposed joinder will neither unduly complicate the 1449 Proceeding nor delay its schedule.

In fact, joinder will help efficiently resolve the disputes among the parties. By joinder, a single Board decision may dispose of the issues raised in the 1449 Proceeding for all interested parties. Further, joinder will narrow the issues in the co-pending district court actions because Xilinx and Intel have each, contingent upon institution/joinder, stipulated to forego raising the same grounds of unpatentability in their respective parallel litigations. These considerable efficiencies at the district courts incur only *de minimis* cost at the PTAB. Joinder will not complicate or delay the 1449 Proceeding, and will not adversely affect any schedule set in that proceeding.

Joinder will not unduly prejudice any party. Because joinder will not add any new substantive issues, delay the schedule, burden deponents, or increase needless filings, any additional costs on Patent Owner will be minimal. On the other hand,

denial of joinder would prejudice Xilinx. Xilinx's interests may not be adequately protected in the 1449 Proceeding, particularly if Intel settles with Patent Owner. Xilinx should be allowed to join in a proceeding affecting a patent asserted against it. Joinder is especially appropriate here, where Patent Owner withheld its infringement allegations against Xilinx for 2.5 years. *See* Pet. at 14-15. Patent Owner's litigation tactics should not exclude Xilinx from the PTAB.

II. BACKGROUND AND RELATED PROCEEDINGS

FG SRC LLC is the purported owner of the '867 Patent. The '867 Patent is involved in at least each of the following litigations:

Name	Number	Court	Filed
<i>SRC Labs, LLC et al v. Amazon Web Services, Inc et al</i>	2-18-cv-00317	W.D. Wash.	Feb. 26, 2018
<i>FG SRC, LLC v. Intel Corporation</i>	1-20-cv-00834	W.D. Tex.	Apr. 24, 2020
<i>FG SRC LLC v. Xilinx, Inc.</i>	1-20-cv-00601	D. Del.	Apr. 30, 2020

III. STATEMENT OF REASONS FOR THE RELIEF REQUESTED

A. Legal Standards and Applicable Rules

The Board has discretion to join a properly filed IPR petition to an existing IPR proceeding. *See* 35 U.S.C. § 315(c); 37 C.F.R. § 42.122(b); *see also Dell Inc. v. Network-1 Sec. Solutions, Inc.*, IPR2013-00385, Paper 19, at 4-6; *Sony Corp. v. Yissum Res. & Dev. Co. of the Hebrew Univ. of Jerusalem*, IPR2013- 00326, Paper 15, at 3-4; *Microsoft Corp. v. Proxyconn, Inc.*, IPR2013-00109, Paper 15, at 3-4.

“The Board will determine whether to grant joinder on a case-by-case basis, taking into account the particular facts of each case, substantive and procedural issues, and other considerations.” *Dell*, IPR2013-00385, Paper 19, at 3. The movants bear the burden of proof in establishing entitlement to the requested relief. 37 §§ 42.20(c), 42.122(b). A motion for joinder should:

(1) set forth the 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.

Dell, IPR2013-00385, Paper 19, at 4.

B. Joinder with the 1449 Proceeding Is Appropriate

The Board “routinely grants motions for joinder where the party seeking joinder introduces **identical** arguments and the **same** grounds raised in the existing proceeding.” *Samsung Elecs. Co., Ltd. v. Raytheon Co.*, IPR2016-00962, Paper No. 12 at 9 (Aug. 24, 2016) (emphasis added) (internal quotations and citations omitted). Here, joinder with the 1449 Proceeding is appropriate because Xilinx’s Petition introduces **identical** unpatentability arguments and the **same** grounds raised in the petition of the 1449 Proceeding. In other words, both petitions contain the same grounds based on the same prior art combinations and supporting evidence against the same claims. Indeed, there are no material changes to the facts, citations,

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