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Paper 7
Entered: April 20, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

GESTURE TECHNOLOGY PARTNERS, LLC,
Patent Owner.

IPR2022-00361
Patent 8,194,924 B2

Before PATRICK R. SCANLON, GREGG I. ANDERSON, and BRENT M. DOUGAL, *Administrative Patent Judges.*

DOUGAL, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

Granting Motion for Joinder
35 U.S.C. § 315(c); 37 C.F.R. § 42.122

I. INTRODUCTION

A. Background and Summary

Petitioner, Google LLC, requests that we institute an *inter partes* review to challenge the patentability of claims 1–14 (the "challenged claims") of U.S. Patent 8,194,924 B2 (Ex. 1001, "the '924 patent"). Paper 1 ("Petition" or "Pet."). Concurrently with its Petition, Petitioner filed a Motion for Joinder with *Apple Inc. v. Gesture Technology Partners, LLC*,[1] Case IPR2021-00923 ("the Apple IPR"). Paper 3 ("Mot."). Petitioner represents that the petitioner in the Apple IPR— Apple Inc.—does not oppose the Motion for Joinder. Mot. 1. Patent Owner, Gesture Technology Partners, LLC, did not file a response or an opposition to the Motion.

Applying the standard set forth in 35 U.S.C. § 314(a), which requires demonstration of a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim, we institute an *inter partes* review.[2] Further, for the reasons set forth below, we grant the Motion for Joinder.

B. Related Matters

The parties identify these related matters: *Gesture Technology Partners, LLC v. Huawei Device Co., Ltd.*, No. 2:21-cv-00040 (E.D. Tex.); *Gesture Technology Partners, LLC v. Samsung Electronics Co.*, No. 2:21-cv-00041 (E.D. Tex.); *Gesture Technology Partners, LLC v. Apple Inc.*, No. 6:21-cv-00121 (W.D. Tex.); *Gesture Technology Partners, LLC v. Lenovo Group Ltd.*, No. 6:21-cv-00122 (W.D. Tex.); and *Gesture Technology*

[1] Since the filing of Google's Motion, IPR2022-00093 (LG Electronics, Inc. and LG Electronics U.S.A., Inc.) has been joined with this proceeding. *See* IPR2021-00923, Paper 13.
[2] Our findings and conclusions at this stage are preliminary, and thus, no final determinations are made.

Partners, LLC v. LG Electronics, Inc., No. 6:21-cv-00123 (W.D. Tex.) (transferred to D. NJ as No. 2:21-cv-19234). Pet. 81; Paper 5, 1. Patent Owner identifies these related Board proceedings: IPR2021-00917; IPR2021-00920; IPR2021-00921; IPR2021-00922; IPR2021-00923; IPR2021-01255; IPR2022-00090; IPR2022-00091; IPR2022-00092; IPR2022-00093; IPR2022-00359; IPR2022-00360; and IPR2022-00362. Paper 5, 1–3. Patent Owner identifies these related *Ex Parte* Reexaminations: No. 90/014,900; No. 90/014,901; No. 90/014,902; and No. 90/014,903. *Id.* at 3.

In the Apple IPR, we instituted an *inter partes* review of claims 1–14 of the '924 patent as unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–6, 11, 14	103(a)[3]	Mann,[4] Numazaki[5]
7, 8, 10, 12, 13	103(a)	Mann, Numazaki, Amir[6]
6, 9	103(a)	Mann, Numazaki, Aviv[7]

See Apple IPR, Paper 10 (PTAB Dec. 6, 2021) ("Apple Dec.").

II. INSTITUTION OF *INTER PARTES* REVIEW

The Petition in this proceeding asserts the same grounds of unpatentability as the ones on which we instituted review in the Apple IPR. *Compare* Pet. 7, *with* Apple Dec. 5. Indeed, Petitioner contends that the

[3] The Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112-29, 125 Stat. 284, 285–88 (2011), revised 35 U.S.C. § 103 effective March 16, 2013. Because the challenged patent claims priority before March 16, 2013, we refer to the pre-AIA version.
[4] Canadian Published Patent Application 2,237,939, published Aug. 28, 1998 ("Mann") (Ex. 1004).
[5] U.S. Patent 6,144,366, issued Nov. 7, 2000 ("Numazaki") (Ex. 1005).
[6] U.S. Patent 6,539,100 B1, issued Mar. 25, 2003 ("Amir") (Ex. 1006).
[7] U.S. Patent 5,666,157, issued Sept. 9, 1997 ("Aviv") (Ex. 1007).

"[P]etition and the Apple IPR are substantively identical; they contain the same grounds (based on the same prior-art combinations and supporting evidence) against the same claims." Mot. 1; *see also id.* at 3–5. This includes relying on the same expert declaration as the Apple IPR. *Id.* at 5.

Patent Owner did not file a Preliminary Response.

For the same reasons set forth in our institution decision in the Apple IPR, we determine that Petitioner has shown a reasonable likelihood that at least one claim is unpatentable. We therefore institute trial as to all challenged claims on all grounds stated in the Petition.

III. MOTION FOR JOINDER

The statutory provision governing joinder in *inter partes* review proceedings (35 U.S.C. § 315(c)) reads:

> 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.

As the moving party, Petitioner bears the burden of proving that it is entitled to the requested relief. 37 C.F.R. § 42.20(c). A motion for joinder should: set forth the reasons joinder is appropriate; identify any new grounds of unpatentability asserted in the petition; and explain what impact (if any) joinder would have on the trial schedule for the existing review. *See Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper 15 at 4 (PTAB Apr. 24, 2013).

Petitioner timely filed the Motion no later than one month after institution of the Apple IPR. *See* 37 C.F.R. § 42.122(b). As noted, the

Petition in this case asserts the same unpatentability grounds on which we instituted review in the Apple IPR. *See* Mot. 1. Petitioner also relies on the same prior art analysis and expert testimony submitted by the Apple petitioner. *See id.* at 5. Indeed, the Petition is nearly identical to the petition filed by the Apple petitioner. *See id.* Thus, this *inter partes* review does not present any ground or matter not already at issue in the Apple IPR. *Id.*

If joinder is granted, Petitioner agrees to assume an "'understudy' role" and agrees that this role "shall apply so long as the current petitioner in IPR2021-00923 remains an active party."[8] *Id.* at 7. Petitioner further represents that it will not advance any arguments separate from those advanced by Apple in the consolidated filings. *Id.* Because Petitioner expects to participate only in a limited capacity, Petitioner submits that joinder will not impact the trial schedule for the Apple IPR. *Id.* at 6.

Patent Owner did not file an Opposition to the Motion for Joinder.

Based on the above, we determine that joinder with the Apple IPR is appropriate under the circumstances. Accordingly, we grant Petitioner's Motion for Joinder.

[8] As noted previously, Apple Inc. was the initial Petitioner in IPR2021-00923, however, since the filing of Google's Motion, IPR2022-00093 (LG Electronics, Inc. and LG Electronics U.S.A., Inc.) has been joined with this proceeding. *See* IPR2021-00923, Paper 13. LG Electronics, Inc. and LG Electronics U.S.A., Inc. have also agreed to take an understudy role to Apple Inc. *See id.* at 10. Thus, Google LLC will assume an "understudy role" unless and until Apple Inc., LG Electronics, Inc., and LG Electronics U.S.A., Inc. are no longer parties to the *inter partes* review.

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