

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.
Petitioner

v.

DEMARAY LLC
Patent Owner

Patent No. 7,381,657

Petitioner's Motion for Joinder of IPR2021-00104
Under 35 U.S.C. § 315(c) and 37 C.F.R. §§ 42.22 and 42.122(b)

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I. INTRODUCTION

Samsung Electronics Co. files the present petition for *inter partes* review IPR2021-01091 (the “Samsung IPR”) and moves for joinder with IPR2021-00104, filed by Applied Materials, Inc. (the “Applied IPR”). The Samsung IPR is identical to the Applied IPR in all substantive respects, includes identical exhibits, and relies upon the same declarants. Petitioner does not seek to alter the grounds upon which the Board has already instituted the Applied IPR, and seeks no change in the existing schedule for that IPR proceeding. Petitioner respectfully requests an opportunity to join with the Applied IPR solely as an “understudy,” where Petitioner would only assume an active role in the event Applied Materials settles with Patent Owner Demaray LLC and moves to terminate the Applied IPR.

II. BACKGROUND AND RELATED PROCEEDINGS

Demaray is the owner of U.S. Patent No. 7,381,657 (the “’657 Patent”) and has asserted infringement of this patent in the following cases: *Demaray LLC v. Samsung Electronics Co., Ltd. et al.*, Case No. 6-20-cv-00636 (W.D. Tex.) (“Samsung Litigation”); *Demaray LLC v. Intel Corporation*, Case No. 6-20-cv-00634 (W.D. Tex.) (“Intel Litigation”); *Applied Materials, Inc. v. Demaray LLC*, Case No. 5-20-cv-05676 (N.D. Cal.) (terminated); *Applied Materials, Inc. v. Demaray LLC*, 5-20-cv-09341 (N.D. Cal). The ’657 Patent is also at issue in

Applied Materials, Inc. v. Demaray LLC, IPR2021-00106 (PTAB) (institution denied under 314(a)) and *Intel Corporation v. Demaray LLC*, IPR2021-01031 (PTAB).

On October 23, 2020, Applied Materials filed a Petition requesting an *inter partes* review of claims 1–21 of the '657 Patent. Demaray filed a Preliminary Response to the Petition, Petitioner filed a Reply, and Demaray filed a Sur-reply. The Board instituted the Applied IPR on May 11, 2021.

III. DISCUSSION

Petitioner respectfully requests that the Board exercise its discretion to grant joinder of the Samsung IPR and the Applied IPR proceedings pursuant to 35 U.S.C. § 315(c), 37 C.F.R. § 42.22, and 37 C.F.R. § 42.122(b). In support of this motion, Petitioner proposes consolidated filings and other procedural accommodations designed to streamline the proceedings.

The Board has discretion to join this IPR with the Applied IPR. *See* 35 U.S.C. § 315(c); 37 C.F.R. § 42.122(b); *HTC v. Parthenon Unified Memory Architecture LLC*, IPR2017-00512, Paper 12 at 6 (PTAB June 1, 2017). In considering a motion for joinder, the Board considers the following factors: (1) the reasons why joinder is appropriate; (2) whether the petition raises any new grounds of unpatentability; (3) any impact joinder would have on the cost and trial schedule

for the existing review; and (4) whether joinder will add to the complexity of briefing or discovery. *Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper 15 at 4 (PTAB Apr. 24, 2013); Consolidated Trial Practice Guide 76 (Nov. 2019). All these factors weigh in favor of joinder. As a result, the Board should exercise its discretion to allow joinder here.

A. Reasons Why Joinder Is Appropriate (Factor 1)

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. v. Raytheon Co.*, IPR2016-00962, Paper 12 at 9 (PTAB Aug. 24, 2016) (internal quotations and citations omitted) (emphasis original). Joinder is appropriate in this case because it is the most expedient way to secure the just, speedy, and inexpensive resolution of the related proceedings. *See* 35 U.S.C. § 316(b); 37 C.F.R. § 42.1(b). The Samsung IPR is substantively identical to the corresponding Applied IPR in an effort to avoid multiplication of issues before the Board. Given the duplicative nature of these petitions, joinder of the related proceedings is appropriate. Further, Petitioner will agree to consolidated filings and discovery, and procedural concessions, which Applied Materials does not oppose.

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