UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

GUI GLOBAL PRODUCTS, LTD.,
Patent Owner.

Case IPR2021-01289
Patent 10,259,020 B2

PATENT OWNER'S PRELIMINARY RESPONSE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

REGULATIONS

I. INTRODUCTION

Petitioner, Apple, originally sought joinder with the 335 Proceeding, but if, and only if, the Board has previously denied institution of *Apple Inc., v. GUI Global Products, Ltd.*, IPR2021-00470. Apple Mot. for Joinder at 1. That condition was not met and the 470 Proceeding has been instituted. Now Apple seeks joinder "if and only if the Board will align in time the issuance of final written decisions in the 335 Proceeding and the 470 Proceeding, where alignment is achieved only if the final written decision of the 470 Proceeding issues concurrent with or in advance of the final written decision of the 335 Proceeding." Apple Reply re Mot. for Joinder at 3. The Board should not countenance such litigation tactics and, unless it joins this proceeding with the 335 Proceeding, the Board should exercise its discretion and deny institution of trial. Proceeding otherwise would both subject Patent Owner to the burden of having to defend two identical proceedings and require to the Board to adjudicate same. Apple has already challenged the claims of the '020 patent in the 470 Proceeding and offers no good explanation as to why it waited seven-plus months to file the instant petition which is a copycat of that in the 335 Proceeding. Under these circumstances, instituting trial and not joining this proceeding with the 335 Proceeding, involving identical grounds and identical unpatentability arguments, would be contrary to the requirement of ensuring just, speedy, and inexpensive resolution of such matters. 37 C.F.R. § 42.1(b).

II. BACKGROUND

On February 11, 2021, Petitioner, Apple, filed a petition in IPR2021-00470 ("the 470 Proceeding") challenging claims of U.S. Patent No. 10,259,020 ("the '020 patent"). *Apple Inc. v. GUI Global Products Ltd.*, IPR2020-00470, Paper 4 at 1 (PTAB Feb. 19, 2021). Trial in the 470 Proceeding was instituted on August 13, 2021. IPR2020-00470, Paper 10 at 2 (PTAB Aug. 13, 2021) . Apple has now filed an additional petition (the "Copycat Petition") in this IPR2021-01289 ("the 1289 Proceeding") challenging claims of the '020 patent and has concurrently filed a "conditional" motion for joinder with *Samsung, et al., v. GUI Global Products, Ltd*., IPR2021-00335 ("the 335 Proceeding"), which was instituted on July 2, 2021. The Copycat Petition in this 1289 Proceeding is substantively identical to the petition filed by Samsung in the 335 Proceeding, relies on the same prior art evidence and arguments as in the 335 Proceeding, and is supported by testimony from the same declarant as in the 335 Proceeding, which testimony is substantively identical to that which the declarant provided in the 335 Proceeding. Pet. at 1, Apple Mot. for Joinder at 9.

Apple originally styled its motion for joinder as being *conditional* upon the Board denying institution of the 470 Proceeding. Apple Mot. for Joinder at 1. That condition was not met, as the Board instituted the 470 Proceeding on August 13, 2021. IPR2020-00470, Paper 10 at 2. After that institution and after receiving

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