UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner

v.

KOSS CORPORATION,
Patent Owner

Case IPR2022-00053
Patent 10,206,025

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), Apple Inc. ("Apple" or "Petitioner") moves to join the instantly filed petition with the *inter partes* review instituted against U.S. Patent No. 10,206,025 ("the '025 Patent") in *Bose Corporation v. Koss Corporation*, IPR2021-00612 ("the 612 Proceeding"). This motion is timely filed within one month of the Board's September 15, 2021 institution decision in the 612 Proceeding.

Joinder will not unduly prejudice any party. To this point, joinder will not add any new substantive issues, delay the schedule, burden deponents, or increase needless filings. On the other hand, denial of joinder *would* severely prejudice Apple, and subject future litigants to inefficiencies. As to Apple, its interests may not be adequately protected in the 612 Proceeding, particularly if Bose settles with Koss. With the Board having already found a reasonable likelihood that the'025 Patent is unpatentable, Koss should not be allowed through denial of joinder to subvert the efficiency and fairness at the core of these proceedings, which would otherwise prevent Koss from continuing to assert a patent whose claims have been found reasonably likely invalid against four other defendants by strategically settling its case against Bose. Accordingly, Petitioner should be allowed to join in a proceeding affecting a patent asserted against it.

II. BACKGROUND AND RELEVANT FACTS

Koss Corporation ("Koss") is the purported owner of the '025 Patent. Koss asserted the '025 Patent (and related patents US 10,298,451, US 10,469,934, US 10,506,325, and US 10,491,982) against Apple in *Koss Corp. v. Apple Inc.*, Civil Action No. 6:20-cv-00665. Koss has also asserted the '025 Patent against several other defendants, including Bose Corporation, Skullcandy, Inc., PEAG LLC d/b/a JLab Audio, and Plantronics, Inc.

On February 22, 2021, Apple filed its first petition against the '025 Patent in IPR2021-00546. Nine days later, on March 3, 2021, Bose Corporation independently filed its own petition against the '025 Patent in the 612 Proceeding. The prior art asserted in the 612 Proceeding is entirely different than the prior art asserted by Apple in IPR2021-00546. Indeed, at the time of filing IPR2021-00546 and until Bose filed the 612 Proceeding, Apple was not aware of the primary reference that forms the basis of Grounds 2A-2F of the 612 Proceeding, grounds that account for nearly half of the petition in the 612 Proceeding. Nor was Apple aware of the persuasive technical explanations of Drs. Tim Williams and John Casali supporting all of the grounds in the 612 Proceeding. The 612 Proceeding and Apple's IPR2021-00546, were filed so close in time as to be all but indistinguishable procedurally from simultaneously-filed petitions. And the period of time between Bose's filing of the 612 Proceeding and this joinder motion should

not be relevant, as it does not affect the schedule of the 612 Proceeding or substantially prejudice Koss.

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, Pap. 17 at 4-6 (PTAB Jul. 29 2013); *Sony Corp. v. Yissum Res. & Dev. Co. of the Hebrew Univ. of Jerusalem*, IPR2013- 00326, Pap. 15 at 3-4 (PTAB Sep. 24, 2013); *Microsoft Corp. v. Proxyconn, Inc.*, IPR2013-00109, Pap. 15 at 3-4 (PTAB Feb. 25, 2013). "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* 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:

> [A] set forth the reasons why joinder is appropriate; [B] identify any new grounds of unpatentability asserted in the petition; [C] explain what impact (if any) joinder would have on the trial schedule for the existing review; and [D] address specifically how briefing and discovery may be simplified.

Dell at 4.

As explained below, Apple's joinder would be consistent with the goals expressed in each of the Board's *NHK, Fintiv*, *Snap*, *Sotera*, *General Plastic*, and *Uniloc* decisions by promoting a maximally-efficient resolution to the dispute between the parties. *See*, *e.g.*, *General Plastic Indus. Co. v. Cannon Kabushiki Kaisha*, IPR2016-01357, Pap. 19 at 16 (PTAB Sept. 6, 2017) (precedential) ("In exercising discretion…we are mindful of the goals of the AIA–namely, to improve patent quality and make the patent system more efficient by the use of post-grant review procedures"); *Apple Inc. v. Fintiv, Inc.*, IPR2020- 00019, Pap. 11 at 6 (PTAB Mar. 20, 2020) ("the Board takes a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review").

B. Joinder with the 612 Proceeding Is Appropriate

Apple respectfully submits that joinder with the 612 Proceeding is appropriate. The Joinder Petition is substantively the same as the petition filed in the 612 Proceeding. As such, joinder would not require or necessitate changes to the facts, citations, evidence, or arguments used in demonstrating satisfaction of the implicated claims by the applied prior art in the 612 Proceeding. Hence, joinder does not impede the Board from, consistent with 37 C.F.R. § 42.1(b), "secur[ing] the just, speedy, and inexpensive resolution" of the grounds advanced by Bose in the 612 Proceeding.

The Board has held that joinder of the type requested here should be

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