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Paper 8
Date: March 17, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG ELECTRONICS, INC. and LG ELECTRONICS U.S.A., INC.,
Petitioner,

v.

GESTURE TECHNOLOGY PARTNERS, LLC,
Patent Owner.

IPR2022-00090
Patent 8,553,079 B2

Before KEVIN F. TURNER, JONI Y. CHANG, 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, LG Electronics, Inc. and LG Electronics U.S.A., Inc., requests that we institute an *inter partes* review to challenge the patentability of claims 1–30 (the "challenged claims") of U.S. Patent 8,553,079 B2 (Ex. 1001, "the '079 patent"). Paper 1 ("Petition" or "Pet."). Concurrently with its Petition, Petitioner filed a Motion for Joinder with *Apple Inc. v. Gesture Technology Partners, LLC*, IPR2021-00922 ("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, argues that Petitioner's request is deficient and should not be granted. Paper 7 ("Preliminary Response" or "Prelim. Resp.").

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.[1] 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] 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.). Pet. 75; Paper 5, 1. Patent Owner identifies these related Board proceedings: IPR2021-00917; IPR2021-00920; IPR2021-00921; IPR2021-00922; IPR2021-00923; IPR2021-01255; IPR2022-00091; IPR2022-00092; and IPR2022-00093. Paper 5, 1–2. 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 1–30 of the '079 patent as unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1, 2, 4–14, 17, 19, 21, 22, 24–28, 30	103(a)[2]	Numazaki,[3] Knowledge of a POSA[4]
3, 15, 23	103(a)	Numazaki, Numazaki '863[5]
16, 29	103(a)	Numazaki, DeLuca[6]
18	103(a)	Numazaki, DeLeeuw[7]
20	103(a)	Numazaki, Maruno[8]

See Apple IPR, Paper 10 (PTAB Nov. 29, 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.

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[2] 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 was filed before March 16, 2013, we refer to the pre-AIA version.
[3] U.S. Patent 6,144,366, issued Nov. 7, 2000 ("Numazaki") (Ex. 1004).
[4] A person of ordinary skill in the art ("POSA").
[5] U.S. Patent 5,900,863, issued May 4, 1999 ("Numazaki '863") (Ex. 1005).
[6] U.S. Patent 6,064,354, issued May 16, 2000 ("DeLuca") (Ex. 1006).
[7] U.S. Patent 6,088,018, issued July 11, 2000 ("DeLeeuw") (Ex. 1007).
[8] U.S. Patent 6,191,773 B1, issued Feb. 20, 2001 ("Maruno") (Ex. 1008).

Compare Pet. 5, *with* Apple Dec. 4–5. Indeed, Petitioner contends that the "Petition is substantively identical to the original Apple IPR petition in all material respects" and that "[t]he Petition here and the Apple IPR petition challenge the same claims of the '079 patent on the same grounds relying on the same prior art and evidence, including a declaration identical in substance from the same expert." Mot. 2; *see also*, *id.* at 6–7.

Patent Owner's Preliminary Response presents a number of arguments as to why the Petition should not be granted. Prelim. Resp. 5–31. We address each argument below and ultimately institute an *inter partes* review on the same grounds as the ones on which we instituted review in the Apple IPR.

A. Grounds of Unpatentability

Patent Owner's Preliminary Response repeats the same arguments over the Petition's grounds of unpatentability that Patent Owner presented in the Apple IPR. *Compare* Prelim. Resp. 5–21 *with* Apple IPR, Paper 8, 5–21. Thus, for the same reasons set forth in our institution decision in the Apple IPR, we determine that the information presented in the Petition shows a reasonable likelihood that Petitioner would prevail in showing that claims 1–30 would have been obvious. *See* Apple Dec. 7–17. Accordingly, we institute an *inter partes* review on the same basis as we instituted review in the Apple IPR.

B. 35 U.S.C. § 314(a)

Patent Owner argues that "[t]he Petition should be denied . . . under 35 U.S.C. § 314(a) in view of the *General Plastic*[9] factors." Prelim. Resp.

[9] *General Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 17 (PTAB Sept. 6, 2017) (precedential).

21–22. Patent Owner argues that we should apply the *General Plastic* factors because:

> Even when Petitioner files a motion to join, the Board first decides whether to institute the IPR before reaching the joinder decision. *Apple Inc. v. Uniloc 2017 LLC*, IPR2020-00854, Paper 9 at 5 (PTAB. Oct. 28, 2020) (precedential) [("*Apple v. Uniloc*")] ("Under 35 U.S.C. § 315(c), the discretion of the Director to join a party to an ongoing IPR is premised on the Director's determination that the petition warrants institution.").

Id. at 21–22.

In *Apple v. Uniloc*, the petitioner filed a first petition for *inter partes* review that was denied and then, after another party filed an additional petition for *inter partes* review of the patent, the petitioner filed its second petition with a motion for joinder. *Apple v. Uniloc* at 6. However, not only was that the second petition for *inter partes* review filed by the petitioner, but the petitioner was also barred under 35 U.S.C. § 315(b) from filing any further petitions. *Id.* at 6–7. Thus, under these facts, among others, the panel exercised its discretion to decline institution of the petition after applying the *General Plastic* factors. *Id.* at 13.

Here, however, none of the unique facts in *Apple v. Uniloc* are present. The Petition is substantially identical to the petition in IPR2021-00922 ("the Apple IPR"), which it seeks to join, and it presents us with a standard "me too" petition with a motion for joinder. Patent Owner presents no unique facts here that separate the Petition from most other "me too" petitions with a motion for joinder, with the possible exception that Patent Owner sued both Petitioner and the petitioner in the Apple IPR for patent

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