

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

GESTURE TECHNOLOGY PARTNERS, LLC,  
Patent Owner.

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IPR2022-00092  
Patent 8,878,949 B2

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

SCANLON, *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

LG Electronics, Inc. and LG Electronics U.S.A., Inc. (collectively, “Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–18 of U.S. Patent No. 8,878,949 B2 (Ex. 1001, “the ’949 patent”). Petitioner also filed a Motion for Joinder (Paper 3, “Mot.”) requesting that it be joined to IPR2021-00921 (the “Apple IPR”) filed by Apple Inc. (“Apple”). Mot. 1. Gesture Technology Partners, LLC (“Patent Owner”) filed a Preliminary Response (Paper 7, “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.<sup>1</sup> Further, for the reasons set forth below, we grant the Motion for Joinder.

## II. BACKGROUND

### A. *Real Parties in Interest*

Petitioner identifies itself as the real party in interest. Pet. 62. Patent Owner identifies itself as the real party in interest. Paper 5, 1.

### B. *Related Matters*

The parties identify the following proceedings as related matters involving the ’949 patent: *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.); *Gesture Technology Partners, LLC v. LG Electronics, Inc.*, No. 6:21-cv-00123 (W.D. Tex.); *Gesture Technology Partners, LLC v. Huawei Device Co., Ltd.*, No. 2:21-cv-

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<sup>1</sup> Our findings and conclusions at this stage are preliminary, and thus, no final determinations are made.

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00040 (E.D. Tex.); and *Gesture Technology Partners, LLC v. Samsung Electronics Co., Ltd.*, No. 2:21-cv-00041 (E.D. Tex.). Pet. 62; Paper 5, 1.

In addition, Patent Owner identifies the following *inter partes* review proceedings as related matters: IPR2021-00917; IPR2021-00920; IPR2021-00921; IPR2021-00922; and IPR2021-00923. Paper 5, 1–2. Patent Owner also 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, the Board instituted an *inter partes* review of claims 1–18 of the ’949 patent on the following grounds:<sup>2</sup>

<b>Claim(s) Challenged</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>
1–18	103(a)	Numazaki, <sup>3</sup> Nonaka <sup>4</sup>
6, 12, 17	103(a)	Numazaki, Nonaka, Aviv <sup>5</sup>

*See* Apple IPR, Paper 8 (PTAB Dec. 13, 2021) (“Apple Dec.”).

### III. 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. 6, 10–53, *with* Apple Dec. 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 ’949 patent on the same grounds relying on

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<sup>2</sup> The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), amended 35 U.S.C. § 103. Because the ’949 patent has an effective filing date before the March 16, 2013, effective date of the applicable AIA amendments, we apply the pre-AIA version of 35 U.S.C. § 103.

<sup>3</sup> US 6,144,366, issued Nov. 7, 2000 (Ex. 1004).

<sup>4</sup> JP H4-73631, published Mar. 9, 1992 (Ex. 1005).

<sup>5</sup> US 5,666,157, issued Sept. 9, 1997 (Ex. 1006).

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. 6–40. 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. 6–29, *with* Apple IPR, Paper 6 at 6–28. 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 1–18 would have been obvious. *See* Apple Dec. 7–24. 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*<sup>6</sup> factors.” Prelim. Resp. 30 (footnote added). 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 (P.T.A.B. Oct. 28, 2020) (precedential) [(“*Apple v.*

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<sup>6</sup> *General Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 17 (PTAB Sept. 6, 2017) (precedential).

*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.”).

Prelim. Resp. 30.

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*, Paper 9 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 IPR2021-00921 (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 infringement, which is those parties’ only connection to one another identified by Patent Owner. *See* Prelim. Resp. 32–33.<sup>7</sup>

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<sup>7</sup> Patent Owner does not argue that Petitioner and the petitioner in the Apple IPR are also accused of infringement based on a product that involves both petitioners, as in *Valve Corporation v. Electronic Scripting Products, Inc.*, IPR2019-00062, Paper 11 at 9–10 (PTAB Apr. 2, 2019) (precedential), rather, Patent Owner merely states that they filed suit against both parties in separate suits, but on the same day.

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