

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

Case No. IPR2022-00092
U.S. Patent No. 8,878,949

**MOTION FOR JOINDER TO *INTER PARTES* REVIEW
(35 U.S.C. § 315(c) AND 37 C.F.R. § 42.122(b))**

I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b), LG Electronics, Inc. and LG Electronics U.S.A., Inc. (“Petitioner”) moves for joinder with the *Inter Partes* Review of U.S. Patent No. 8,878,949 (“the ’849 Patent”), *Apple Inc. vs. Gesture Technology Partners LLC*, IPR2021-00921 (“the Apple IPR”), for which the petition for *Inter Partes* Review was filed on June 2, 2021, and is currently pending. IPR2021-00921, paper 1. Petitioner requests that action on this motion be held in abeyance until, and only if, the Apple IPR is instituted.¹ This motion is timely because it is filed before institution of the Apple IPR, *i.e.*, “no later than one month after the institution date” of the Apple IPR. 37 C.F.R. § 42.122(b); *Central Security Group – Nationwide, Inc. v. Ubiquitous Connectivity, LP*, IPR2019-01609, Paper 11, at 8-9 (P.T.A.B. Feb. 26, 2020) (stating that § 42.122(b) is “[t]he only timing requirement for a motion for joinder”). Petitioner understands that the petitioner in the Apple IPR (“Apple”) does not oppose Petitioner’s request for joinder.

¹ Should the Board deny institution of the Apple IPR, this Motion should be considered moot and Petitioner respectfully requests that the Board consider this petition independently of the Apple IPR.

Petitioner requests institution of this Petition for *Inter Partes* Review. This Petition is substantively identical to the original Apple IPR petition in all material respects. The only substantive changes are in the Introduction to identify the correct Petitioner, in the discussion of the *Fintiv* factors to accurately describe the procedural history of the underlying litigation between Petitioner and Patent Owner, and in mandatory notices under 37 C.F.R. § 42.8(b). The Petition here and the Apple IPR petition challenge the same claims of the '949 patent on the same grounds relying on the same prior art and evidence, including a declaration identical in substance from the same expert.

Thus, the Petition warrants institution under 35 U.S.C. § 314, and 35 U.S.C. § 315(c) permits Petitioner's joinder to the Apple IPR.

Further, if joined, Petitioner agrees to adhere to all applicable deadlines in the Apple IPR and coordinate all filings with Apple in the Apple IPR. Apple will maintain the lead role in the proceedings so long as it is a party to the proceedings and is not estopped under § 315(e)(1), and Petitioner here will assume an understudy role. Petitioner will only assume the lead role in the proceedings if Apple is no longer a party to the proceedings or unable to advance arguments for one or more claims, or grounds, for example, because of § 315(e)(1). Petitioner agrees to consolidated filings for all substantive papers in the proceeding. Apple and

Petitioner will be jointly responsible for the consolidated filings. Absent a Board order precluding the Apple from making arguments that would otherwise be available to Petitioner, Petitioner will not advance any arguments separate from those advanced by Apple in the consolidated filings. These limitations will avoid lengthy and duplicative briefing. Also, Petitioner will not seek additional depositions or deposition time, and will coordinate deposition questioning and hearing presentations with Apple. Petitioner agrees to the foregoing conditions even in the event that other IPRs filed by other, third-party petitioners are joined with the Apple IPR.

Joinder will help efficiently resolve the disputes among the parties. By joinder, a single Board decision may dispose of the issues raised in the Apple IPR for all interested parties. Further, the Patent Owner has asserted the '949 patent in district court against Petitioner. Joinder will estop Petitioner from asserting in district court those issues resolved in a final decision from the Apple IPR, thus narrowing the issues in the district court. *See* 35 U.S.C. § 315(e)(2). Finally, joinder would not complicate or delay the Apple IPR and would not adversely affect any schedule set in that proceeding. In sum, joinder would promote efficient adjudication in multiple forums. On the other hand, if instituted, maintaining the

Petitioner's IPR proceeding separate from that of the Apple IPR would entail needless duplication of effort.

Joinder will not unduly prejudice any party. Because joinder will not add any new substantive issues, delay the schedule, burden deponents, or increase needless filings, any additional costs on the Patent Owner would be minimal. On the other hand, denial of joinder would prejudice Petitioner. Their interests may not be adequately protected in the Apple IPR proceedings, particularly if Apple settles with the Patent Owner. Petitioner should be allowed to join in a proceeding affecting a patent asserted against them.

II. BACKGROUND AND RELATED PROCEEDINGS

Gesture Technology Partners, LLC (the "Patent Owner") is the owner of the '949 patent. Gesture Technology Partners, LLC has asserted the '949 patent against Petitioner in *Gesture Technology Partners, LLC v. LG Electronics, Inc. et al.*, No. 6:21-cv-00123 (W.D. Tex.) (transferred to District of New Jersey as Case No. 2:21-cv-19234). On June 2, 2021, Apple filed its IPR petition, IPR2021-00921, against the '949 patent. Petitioner here timely moves for joinder with the Apple IPR.

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