

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

SPLUNK INC.

Petitioner,

v.

SABLE NETWORKS, INC.

Patent Owner.

---

Case No. IPR2022-00228

U.S. Patent No. 8,243,593

---

**REPLY IN SUPPORT OF MOTION FOR JOINDER TO RELATED  
INSTITUTED *INTER PARTES* REVIEW UNDER 37 C.F.R. §42.122(B)**

Petitioner Splunk Inc.’s “me-too” petition is virtually identical to Cloudflare’s petition, asserting the same grounds, relying on the same prior art analysis, and using the same expert and testimony. Joinder in such a scenario is appropriate and consistent with the Board’s well-settled joinder practice.

Sable mischaracterizes Splunk’s positions and the Board’s rules and requirements. Splunk did not carve out any exceptions from its role as an understudy to Cloudflare’s petition. Splunk’s proposal is in line with prior Board decisions on joinder. If joinder is granted, Splunk would participate in the capacity prescribed by the Board. Sable’s request that Splunk withdraw its exhibits is contrary to the Board’s well-settled practice. Similarly, Sable’s assertion that Splunk’s agreement to post-joinder cooperation is insufficient is unsupported.

**I. Splunk’s Proposal Is Consistent With the Board’s Practice and Splunk Will Defer To The Board’s Preference**

Splunk did not carve out any exceptions from its role as an understudy to Cloudflare’s IPR. Splunk stated in its Motion that “[a]bsent termination of Cloudflare as a party to the proceeding, Splunk anticipates participating in the proceeding in a limited capacity.” (Paper No. 3 at 1.) And to the extent Splunk does participate, Splunk has agreed to coordinate with Cloudflare. (*Id.* at 7.)

The Board routinely grants motions for joinder where Petitioner agreed to participate as Splunk proposes. *See, e.g., Advance Micro Devices, Inc. et al. v. Monterey Research, LLC*, IPR2021-00776, Paper No. 13 at 22 (PTAB Oct. 13,

IPR2022-00228

2021); *Taiwan Semiconductor Manufacturing Co., Ltd. v. Arbor Global Strategies, LLC*, IPR2021-00736, Paper No. 9 at 8 (PTAB Jun. 11, 2021); *Taiwan Semiconductor Manufacturing Co., Ltd. v. Arbor Global Strategies, LLC*, IPR2021-00737, Paper No. 10 at 8 (PTAB Jun. 11, 2021); *Taiwan Semiconductor Manufacturing Co., Ltd. v. Arbor Global Strategies, LLC*, IPR2021-00738, Paper No. 9 at 9 (PTAB Jun. 14, 2021); *Hyundai Motor Co. v. Am. Vehicular Scis. LLC*, IPR2014-01543, Paper No. 11 at 2-4 (PTAB Oct. 24, 2014); *Dell Inc. v. Network-1 Sec. Sols., Inc.*, IPR2013-00385, Paper No. 17, at 6-10 (PTAB Jul. 29, 2013); *Motorola Mobility LLC v. Softview LLC*, IPR2013-00256, Paper No. 10 at 4-5 (PTAB June 20, 2013). Splunk will defer to the Board’s preference on this issue and participate in the capacity prescribed by the Board.

## **II. Splunk Should Not Be Required To Withdraw Its Exhibits**

Sable’s demand that Splunk “be required to withdraw all its exhibits” is unsupported. Contrary to Sable’s assertions, the Board routinely grants joinder without requiring the joined petitioner to withdraw its exhibits, even when substantially the same evidence was filed. *See, e.g., Pfizer, Inc. v. Sanofi-Aventis Deutschland GmbH*, IPR2019-01022, Paper No. 12 at 9 (PTAB Aug. 19, 2019) (granting joinder where petitioner “presents nearly identical arguments and relies on substantially the same evidence”); *Oracle Corp. et al. v. RealTime Data LLC*, IPR2016-01671, Paper No. 15 at 3 (PTAB Mar. 8, 2017) (granting joinder where

Petition “copies verbatim the challenges set forth in the petition[] and relies upon the same evidence, including the same expert declaration.”); *Nokia v. Oyster Optics, LLC*, IPR2018-00984, Paper No. 9 at 3 (PTAB Jul. 27, 2018) (same). Sable has not pointed to any contrary decision.

### III. Splunk’s Agreement To Cooperate Post-Joinder Is Sufficient

Splunk has agreed to serve as an understudy in the joined IPR unless Cloudflare stops actively participating, at which point Splunk would assume an active role.<sup>1</sup> The Board routinely grants joinder based solely on the Petitioner’s representations of post-joinder cooperation. *See, e.g., Priceline.com LLC v. DDR*

---

<sup>1</sup> Sable’s assertion that “Splunk offers no evidence or averments substantiating that Cloudflare has agreed to any of this” asks the Board to ignore Splunk’s representation on that very point. (Paper No. 6 at 7; Motion at 2.) Splunk’s representation in its motion should have been sufficient, but Splunk hereby reaffirms it: Splunk conferred with Cloudflare and Cloudflare indicated it does not oppose Splunk’s joinder. *Ecobee, Inc. v. Ecofactor, Inc.*, IPR2021-01052, Paper No. 7 at 6 (PTAB Oct. 7, 2021) (granting joinder where, *inter alia*, “Petitioner further indicates that [first petitioner] does not oppose the request joinder”); *Ecobee, Inc. v. Ecofactor, Inc.*, IPR2021-00792, Paper No. 7 at 6 (PTAB Oct. 1, 2021) (same). Sable offers nothing to the contrary.

*Holdings, LLC*, IPR2019-00435, Paper No. 9 at 8 (PTAB Jun. 10, 2019) (granting Motion for Joinder where, *inter alia*, “Petitioner has agreed to consolidate filings and to take an understudy role”).

Sable fails to cite any authority to support its argument that the Board *must* obtain the original petitioner’s explicit agreement to post-joinder cooperation. *Samsung Elecs. Co. v. Arendi S.A.R.L.* is inapposite. IPR2014-01144, Paper No. 11 at 6 (PTAB Oct. 2, 2014). In *Arendi*, Samsung proposed additional pages for briefing, “introduce[d] new evidence and arguments,” and “fail[ed] to set forth how briefing and discovery are simplified.” *Id.* at 5.

By contrast, Splunk has agreed to coordinate with Cloudflare to consolidate any filings, manage questioning at depositions, manage presentations at the hearing, ensure that briefing and discovery occur within the time normally allotted, and avoid redundancies. If the Board prefers, Splunk will also obtain authorization from the Board prior to separate substantive filing (if any), limit such filings to only points of disagreement with Cloudflare (Splunk does not anticipate any), and not file separate arguments in support of points already made by Cloudflare.

Sable also mischaracterizes *Lupin Ltd. v. Senju Pharm. Co., Ltd.*, IPR2015-01871, Paper No. 13 (PTAB Jan. 25, 2016). Sable contends that *Lupin* stands for the proposition that “the Board has required promises of post-joinder cooperation from a *first* petitioner to be substantiated if joinder is granted.” (Paper No. 6 at 7-8

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.