

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

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

I. INTRODUCTION

Petitioner Splunk Inc. (“Splunk”) submits concurrently with this motion, a petition for *inter partes* review (the “Petition”) of claims 1-44 of U.S. Patent No. 8,243,593 (“the ’593 patent”), which is assigned to Sable Networks, Inc. (“Sable”). Splunk requests that this proceeding be joined with a pending *inter partes* review initiated by Cloudflare, Inc. (“Cloudflare”), *Cloudflare, Inc. v. Sable Networks, Inc.*, IPR2021-00909 (“Cloudflare IPR”).

Splunk’s request for joinder is timely because the Board has just instituted the Cloudflare IPR on November 19, 2021. The Petition is also narrowly tailored to the grounds of unpatentability in the Cloudflare IPR, and in fact is practically a copy of Cloudflare’s petition with respect to the proposed grounds, including the same analysis of the prior art and expert testimony by the same expert. In addition, joinder is appropriate because it will efficiently resolve the patentability of the challenged claims of the ’593 patent in a single proceeding, without prejudicing the parties to the Cloudflare IPR.

Absent termination of Cloudflare as a party to the proceeding, Splunk anticipates participating in the proceeding in a limited capacity. To the extent that Splunk does participate, Splunk will coordinate with Cloudflare to consolidate any filings, manage questioning at depositions, manage presentations at the hearing,

IPR2022-00228

ensure that briefing and discovery occur within the time normally allotted, and avoid redundancies.

Splunk has conferred with counsel for Cloudflare regarding the subject of this motion. Cloudflare has indicated that it does not oppose joinder.

II. BACKGROUND AND RELATED PROCEEDINGS

Sable has asserted the '593 patent against a number of defendants, including Splunk. On March 25, 2021, Sable filed a complaint asserting the '593 patent against Splunk. *See* Case No. 5:21-cv-00040-RWS (E.D. Tex. filed March 25, 2021). On June 24, 2021, Sable filed an amended complaint asserting the '593 patent against Splunk and Critical Start, Inc. *Id.*

On May 7, 2021, Cloudflare filed a petition for *inter partes* review challenging claims 1-44 of the '593 patent, which was assigned Case No. IPR2021-00909. The Board has just issued a Decision on Institution in IPR2021-00909 granting Cloudflare's petition. (IPR2021-00909, Paper 16.)

The present Petition raises only the grounds of unpatentability that are the subject of the Cloudflare IPR, and in fact is practically a copy of Cloudflare's petition with respect to the proposed grounds, including the same prior art analysis and expert testimony. (*See* Petition, Paper 1.)

III. STATEMENT OF REASONS FOR RELIEF REQUESTED

A. Splunk's Motion for Joinder Is Timely

The Board has authority to join as a party any person who properly files a petition for *inter partes* review to an instituted *inter partes* review. 35 U.S.C. § 315(c). A motion for joinder must be filed within one month of institution of any *inter partes* review for which joinder is requested. 37 C.F.R. § 42.122(b). Here, because the Board has just issued a Decision on Institution granting Cloudflare's petition on November 19, 2021, this motion for joinder is timely.

B. The Relevant Factors Weigh in Favor of Joinder

In deciding whether to grant a motion for joinder, the Board considers several factors including: (1) the reasons why joinder is appropriate; (2) whether the party to be joined has presented any new grounds of unpatentability; (3) what impact, if any, joinder would have on the trial schedule for the existing review; and (4) how briefing and discovery may be simplified. *See, e.g., Hyundai Motor Co. v. Am. Vehicular Scis. LLC*, IPR2014-01543, Paper No. 11 at 3 (Oct. 24, 2014); *Macronix Int'l Co., Ltd. v. Spansion LLC*, IPR2014-00898, Paper No. 15 at 4 (Aug. 13, 2014) (citing *Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper No. 15 at 4 (April 24, 2013)). Each of the four factors considered by the Board weighs in favor of joinder.

1. Joinder is Appropriate

Joinder with the Cloudflare IPR is appropriate because the Petition is limited to the same grounds raised in Cloudflare's petition. The Petition also relies on the same prior art analysis and expert testimony submitted by Cloudflare. Indeed, the Petition is virtually identical with respect to the grounds raised, and does not include any grounds not raised in Cloudflare's petition.

Joinder is also appropriate because it will promote the efficient determination of patentability of the challenged claims of the '593 patent. For example, a Final Written Decision on the patentability of the challenged claims has the potential to minimize issues in the underlying litigations, and potentially resolve the litigations altogether with respect to the '593 patent. Absent joinder, if Sable and Cloudflare settle, the PTAB may be called upon to re-adjudicate in this IPR proceeding the same grounds on which Cloudflare had already shown it would be reasonably likely to prevail. This would waste judicial resources.

Moreover, granting joinder will not prejudice Sable or Cloudflare. As mentioned above, the Petition does not raise any new ground that is not in Cloudflare's petition. In addition, the Board has just issued a Decision on Institution in the Cloudflare IPR on November 19, 2021. Therefore, joinder should not significantly affect the timing of the Cloudflare IPR. There should also be little to no additional cost to Sable or Cloudflare given the overlap in the petitions.

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.