

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASSA ABLOY AB, ASSA ABLOY INC.,
ASSA ABLOY RESIDENTIAL GROUP, INC., AUGUST HOME, INC.,
HID GLOBAL CORPORATION, and
ASSA ABLOY GLOBAL SOLUTIONS, INC.,
Petitioner,

v.

CPC PATENT TECHNOLOGIES PTY, LTD.,
Patent Owner.

IPR2022-01045 and IPR2022-01089
Patent 9,269,208 B2

Before SCOTT A. DANIELS, BARRY L. GROSSMAN, and
AMBER L. HAGY, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

DECISION¹
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

¹ This Order addresses the two proceedings listed above, which raise the same issues for different claims of the same patent. We issue this one Decision, which will be filed in each proceeding. Unless specifically authorized by the Board, the parties are not authorized to use this style of filing.

I. INTRODUCTION

A. *Background and Summary*

ASSA ABLOY AB, ASSA ABLOY Inc., ASSA ABLOY Residential Group, Inc., August Home, Inc., HID Global Corporation, and ASSA ABLOY Global Solutions, Inc. (collectively “Petitioner”²) filed two Petitions, collectively requesting *inter partes* review of claims 1–13 (the “challenged claims”) of U.S. Patent No. 9,269,208 B2 (Ex. 1007 in each proceeding, “the ’208 patent”). Paper 3, 3³ (“Pet.”). CPC Patent Technologies Pty Ltd. (“Patent Owner”) filed a Preliminary Response to each Petition. Paper 8 (“Prelim. Resp.”). With our authorization to address Patent Owner’s arguments that the Petition is time-barred under 35 USC § 315(b) (*see* Paper 10), Petitioner filed a Reply (Paper 14 (“Prelim. Reply”)); and Patent Owner filed a Sur-Reply (Paper 18 (“Sur-Reply”)).

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2022) (permitting the Board to institute trial on behalf of the Director). To institute an *inter*

² *See Cradlepoint, Inc. et al v. 3G Licensing S.A.*, IPR2021-00639, Paper 12, 2 (PTAB May 13, 2021) (“[F]or each ‘petition’ there is but a single party filing the petition, no matter how many companies are listed as petitioner or petitioners and how many companies are identified as real parties-in-interest. . . . Even though the separate sub-entities regard and identify themselves as ‘Petitioners,’ before the Board they constitute and stand in the shoes of a single ‘Petitioner. . . . they must speak with a single voice, in both written and oral representation.”).

³ We cite to the record in IPR2022-01045, unless a specific citation to each Petition is required for clarity. Similar documents, generally having the identical exhibit number, were filed in each of the two proceedings to which this Decision applies.

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partes review, we must determine that the information presented in the petition, any preliminary response, or other pre-institution briefing shows “a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). “The ‘reasonable likelihood’ standard is a somewhat flexible standard that allows the Board room to exercise judgment.” Patent Trial and Appeal Board Consolidated Trial Practice Guide, 53 (Nov. 2019) (“TPG”).⁴

Petitioner has the burden of proof. Petitioner’s burden does not change even if Patent Owner does not file a preliminary response, or files a preliminary response without addressing the substantive unpatentability assertions. *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (“In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.”). This burden of persuasion never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

A decision to institute is “a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition.” *PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018). For the reasons set forth below, we determine that Petitioner has demonstrated that there is a reasonable likelihood that at least one of the challenged claims in each of the ’045 and ’089 proceedings is unpatentable. Accordingly, we institute an *inter partes* review of all challenged claims and on all grounds asserted in the ’045 and ’089 Petitions.

⁴ The TPG is available at <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf>.

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B. Two Petitions

We first address Petitioner’s filing two petitions challenging a single patent.

The Petition in IPR2022-01045 (“the ’045 petition”) challenges claims 1–9 of the ’208 patent, directed to a “system for providing secure access to a controlled item” (claims 1–8) or “a transmitter subsystem” for such a system (claim 9). The Petition in IPR2022-01089 (“the ’089 petition”) challenges claims 10–13 of the ’208 patent, directed to a “method for providing secure access to a controlled item in a system.”

The Board recognizes that there may be circumstances in which more than one petition may be necessary, including, for example, when the patent owner has asserted a large number of claims in litigation or when there is a dispute about priority date requiring arguments under multiple prior art references. Patent Trial and Appeal Board Consolidated Trial Practice Guide, 59 (Nov. 2019) (“TPG”).⁵

Petitioner asserts that two petitions “are necessary to address each of the claims and their lengthy claim recitations, including numerous means-plus-function limitations.” Paper 2 (Petitioners’ Ranking and Explanation for Two Petitions), 2 (emphasis deleted) (“Pet. Ranking”).⁶ Petitioner also

⁵ The TPG is available at <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf>.

⁶ The TPG provides that if a petitioner files two or more petitions challenging the same patent, the petitioner should identify “a ranking of the petitions” and provide a succinct explanation of why multiple petitions are necessary. TPG, 59–60. If the petitioner provides this information, the patent owner could, in its preliminary responses or in a separate paper filed with the preliminary responses, respond to the petitioner. *Id.* at 60. Here, Patent Owner did *not* respond to Petitioner’s ranking and explanation.

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asserts “[b]oth petitions are necessary because each challenges distinct independent claims and their dependent claims—an approach that was driven by word limits.” Pet. Ranking 4 (citing *Intel Corp. v. VLSI Technology LLC*, IPR2019-01199, Paper 19 at 10 (PTAB Feb. 6, 2020) (declining to exercise discretion to deny petitions where “each petition is directed to a different independent claim.”); *Microsoft Corp. v. IPA Techs. Inc.*, IPR2019-00810, Paper 12 at 14 (PTAB Oct. 16, 2019) (“Faced with word count limitations and a large number of challenged claims, Petitioner’s decision to divide its analysis of those claims among a number of petitions appears reasonable.”)). We also note that the identical references are relied on in both Petitions.

Based on the specific facts of these proceedings, we agree with Petitioner and exercise our discretion to allow Petitioner to proceed with both the ’045 petition and the ’089 petition.

Additionally, Patent Owner’s Preliminary Responses and Sur-replies in both the ’045 and ’089 Petitions raise identical defenses based on an asserted statutory bar to the Petitions under 35 U.S.C. § 315(b).

Patent Owner does not respond to the merits of Petitioner’s unpatentability assertions in either the ’045 or ’089 Petitions.

Based on the unique factual posture of these proceedings, discussed above, and considering the efficiency to the Board and parties of discussing the same issues and same evidence for the same patent in a single decision, we exercise our discretion to issue a single Decision addressing both the ’045 petition and the ’089 petition.

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