

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SAMSUNG ELECTRONICS CO., LTD.,  
SAMSUNG ELECTRONICS AMERICA, INC., and APPLE INC.,

Petitioners

v.

JAWBONE INNOVATIONS, LLC,

Patent Owner

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Case IPR2022-01321

U.S. Patent No. 11,122,357

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**PETITIONERS' REPLY IN SUPPORT OF  
MOTION FOR JOINDER TO IPR2022-01124**

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## I. INTRODUCTION

Joinder of this proceeding to IPR2022-01124 is appropriate because joinder will not unduly burden or prejudice the parties to the Google IPR, while efficiently resolving the validity of the '357 patent's challenged claims in a single proceeding. The motion for joinder is timely because it was filed within the time limit for joinder under 37 C.F.R. § 42.122(b). Petitioners have agreed to take an understudy role, and so joinder will not complicate the proceedings. Further, because this is Petitioners' first petition against the '357 patent and because the petition is substantively identical to that in IPR2022-01124, the *General Plastic* factors are inapplicable. To the extent that the Board does consider the *General Plastic* factors, all weigh against discretionary denial.

## II. ARGUMENT

### A. Petitioners' Motion Is Not Premature

The motion for joinder is not premature. Under 37 C.F.R. § 42.122(b), a motion for joinder must be filed "no later than one month after the institution date of any *inter partes* review to which joinder is requested." Here, Petitioners' motion for joinder was filed before the institution date of IPR2022-01124, and so is timely. The Board has consistently found joinder motions timely when filed before institution of the IPR to which they seek joinder. *See, e.g., Zyxel Comms. Corp. v. UNM Rainforest Innovations*, IPR2021-00739, Paper 17 at 15 (Oct. 1, 2021); *Dell Inc. v. Neodron Ltd.*, IPR2020-00731, Paper 9 at 5 (Jul. 31, 2020); *Pfizer, Inc. v. Genentech, Inc.*, IPR 2017-02063, Paper 25 (Feb. 21, 2018).

**B. Joinder Will Not Complicate the Proceedings**

PO does not contest that the grounds and expert testimony in this case are substantively identical to those in IPR2022-01124, to which Petitioners seek joinder. PO, however, takes issue with Petitioners' articulation of their proposed understudy role. Response to Motion for Joinder, Paper No. 10 ("Response") at 4. Petitioners' articulation is identical to that which the Board approved in *Mylan Pharms. Inc. v. Novartis AG*, IPR2015-00268, Paper 17 at 5 (Apr.10, 2015) and other proceedings. *See, e.g., Hyundai Motor Am. v. Stratosaudio, Inc.*, IPR2022-00224, Paper No. 6 at 8-9, Paper No. 11 at 8; *LG Elecs., Inc. v. Parker Vision, Inc.*, IPR2022-00245, Paper No. 9 at 7 (Apr. 12, 2022); *Samsung Elecs. Co., Ltd. v Yanbin Yu*, IPR2020-00492, Paper No. 6 at 7 (Aug. 12, 2020).

Because Petitioners have agreed to take on an understudy role, joinder to IPR2022-01124 will not complicate the proceedings. Joinder under these circumstances will instead result in a gain of efficiency because the issues will be resolved in a single proceeding without impacting the briefing or discovery schedules. Accordingly, joinder is appropriate.

**C. The *General Plastic* Factors Are Inapplicable**

The Board should not apply the *General Plastic* factors here because Petitioners have not previously filed a petition challenging the '357 patent. *See Apple Inc. v. Uniloc 2017 LLC*, IPR2020-00854, Paper 9 (Oct. 28, 2020) (precedential) (determining application of the *General Plastic* factors warranted where petitioner filed a second petition challenging the same patent after institution was denied for its

first petition); *see also LG Elecs., Inc. et al v. Gesture Tech. Partners, LLC*, IPR2022-00092, Paper No. 8 at (May 9, 2022) (declining to apply *General Plastic* factors to a “standard ‘me too’ petition with a motion for joinder” because “none of the unique facts in *Apple v. Uniloc* [were] present”).

**D. The *General Plastic* Factors Weigh Against Exercising Discretion**

To the extent that the Board applies the *General Plastic* factors, the factors weigh strongly against discretionary denial. Because Petitioners have not previously filed a petition requesting *inter partes* review of the '357 patent, the *General Plastic* inquiry should end there. *Apple, Inc. v. Solas OLED, Ltd.*, IPR2020-01275, Paper No. 7 at 4 (Dec. 21, 2020) (granting joinder of a “me too” petition and noting that “[w]e need not determine the applicability of the *General Plastic* factors, however, because Petitioner has confirmed that it has not previously filed a petition requesting *inter partes* review of the [challenged patent]”).

Further consideration of *General Plastic* factor 1 shows PO’s arguments with regard to this factor are inapposite. Response at 5. The “intent in formulating the [*General Plastic*] factors was to take undue inequities and prejudices to the Patent Owner into account.” *General Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 17 (Sept. 6, 2017). The Board has extended its analysis of factor 1 to consider cooperation between earlier and later petitioners with regard to “direction or control over the selection of prior art, the drafting of [the subsequent] petition and supporting

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