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Paper 10
Date: September 1, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC., MICROSOFT CORPORATION, AMAZON.COM, INC., AMAZON WEB SERVICES, INC., AND AMAZON.COM SERVICES LLC,
Petitioner,

v.

LS CLOUD STORAGE TECHNOLOGIES LLC,
Patent Owner.

IPR2023-00733
Patent 10,154,092 B2

Before LARRY J. HUME, MINN CHUNG, and AMBER L. HAGY, *Administrative Patent Judges.*

HUME, *Administrative Patent Judge*.

DECISION

Granting Institution of *Inter Partes* Review
35 U.S.C. § 314
Granting Motion for Joinder
35 U.S.C. § 315(c); 37 C.F.R. § 42.122

I. INTRODUCTION

On March 20, 2023, Cisco Systems, Inc., Microsoft Corporation, Amazon.com, Inc., Amazon Web Services, Inc., and Amazon.com Services LLC (collectively "Cisco et al." or "Petitioner") filed a Petition seeking institution of *inter partes* review of claims 1–24 ("the challenged claims") of U.S. Patent No. 10,154,092 (Ex. 1001, the "'092 Patent"). Paper 1 ("Pet."). LS Cloud Storage Technologies LLC ("Patent Owner") timely filed a Preliminary Response on June 28, 2023. Paper 9 ("Prelim. Resp.").

Petitioner also timely filed a Motion for Joinder, seeking to join as a petitioner in *Google LLC v. LS Cloud Storage Technologies, LLC*, IPR2023-00120 ("Google IPR"), Paper 5 ("Joinder Motion" or "Mot."). Patent Owner did not file an Opposition to the Motion for Joinder.

Upon considering the information presented in each of these papers, for reasons discussed below, we institute trial in this *inter partes* review, and we grant Petitioner's Joinder Motion.

II. DISCUSSION

A. Institution of Trial

In the Google IPR, Google challenges the patentability of claims 1–24 of the '092 patent on the following grounds:

Ground	Claim(s) Challenged	35 U.S.C.[1] §	Reference(s)/Basis
1	1–3, 7–12, 19–23	102(e)	Heil[2]
2	10, 11	102(b)	Heil
3	1–3, 6–24	103(a)	Heil, Nakayama[3]
4	4	103(a)	Heil, Nakayama, Gulick[4]
5	5	103(a)	Heil, Nakayama, Berman[5]

IPR2023-00120, Paper 2, 4–5, 21–76. After considering the petition and Patent Owner's preliminary response in the Google IPR, we instituted trial. *See* IPR2023-00120, Paper 7 at 51 (PTAB May 24, 2023).

Petitioner here (Cisco et al.) represents that the present Petition is substantively identical to the petition in the Google IPR, challenges the same claims based on the same grounds, and relies on the same expert declarations. Mot. 1–2 (citing Ex. 1004, Ex. 2001), 4–5; *see id.* at 5 ("In

[1] The Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112-29, 125 Stat. 284, 285–88 (2011), revised 35 U.S.C. §§ 102 and 103 effective March 16, 2013. The '092 patent claims benefit under 35 U.S.C. § 120 to applications filed before that date, so we refer to the pre-AIA version of the statute, but our findings and analysis would be the same under the current version of the statute.

[2] US 6,173,374 B1, filed Feb. 11, 1998, issued Jan. 9, 2001 (Ex. 1006, "Heil").

[3] US 5,920,893, filed June 2, 1997, issued July 6, 1999. (Ex. 1007, "Nakayama").

[4] US 5,692,211, filed Sept. 11, 1995, issued Nov. 25, 1997 (Ex. 1008, "Gulick").

[5] US 6,118,776, filed Aug. 7, 1997, issued Sept. 12, 2000 (Ex. 1009, "Berman").

short, the Copycat Petition is substantively identical to the Google Petition. The only minor changes include changes necessary for proper identification of the parties filing the petition, the discussion of why discretionary denial under 35 U.S.C. § 314(a) is not warranted as it relates to Cisco, Microsoft, and Amazon, and relevant corresponding documents. On the merits, the Copycat Petition should therefore be instituted for at least the same reasons that the Board should institute the Google IPR."). We have considered the relevant petitions and we agree with Petitioner's representation that this Petition is substantially identical to the petition in the Google IPR. *Compare* Pet., *with* IPR2023-00120, Paper 2. Accordingly, regarding the underlying patentability challenges, there are no additional issues presented by Petitioner.

Patent Owner's instant Preliminary Response contains the same arguments as its preliminary response filed in the Google IPR, but it also adds additional description of the '092 patent (*compare* Prelim. Resp. 4, *with* IPR2023-00120, Paper 6, 2–4), and also adds new arguments that substantially modify certain arguments that were previously presented in connection with claim 1, apparently in response to our claim construction of the phrase "dedicated I/O channel" in the Google IPR. *Compare* Prelim. Resp. 12–19, *with* IPR2023-00120, Paper 6, 12–18; *and see* IPR2023-00120, Paper 7, 14–17. In particular, Patent Owner provides, for the first time, an argument that appears to be directed to a proposed construction of the phrase "dedicated I/O channel," albeit not in the "Claim Construction" section (§ II.B) of the Preliminary Response. *See* Prelim. Resp. 12–19.

We have considered Patent Owner's arguments, including its newly-presented arguments. We conclude that they do not warrant denial of the

Petition under the circumstances presented here, where the instant Petition is substantially identical to that in the Google IPR already instituted, and Petitioner seeks joinder as a party to that proceeding.

In view of the identity of the issues in the instant Petition and the petition in the Google IPR and the already-considered arguments that Patent Owner made in the Google IPR, we determine that this proceeding warrants institution on the grounds presented in the Petition for the same reasons stated in our Decision on Institution in the Google IPR. *See* IPR2023-00120, Paper 7. Accordingly, we proceed with the IPR.

B. Motion for Joinder

Based on authority delegated to us by the Director, we have discretion to join a petitioner as a party to a previously instituted *inter partes* review. 35 U.S.C. § 315(c). Section 315(c) provides, in relevant part, that "[i]f the Director institutes an inter partes review, the Director, in his or her discretion, may join as a party to that inter partes review any person who properly files a petition under section 311 . . . ." *Id.*

As the moving party, Petitioner bears the burden of proving that it is entitled to the requested relief. 37 C.F.R. § 42.20(c). A motion for joinder should (1) set forth the reasons joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; and (3) explain what impact (if any) joinder would have on the trial schedule for the existing review. *Kyocera Corp. v. SoftView LLC*, IPR2013-00004, Paper 15 at 4 (PTAB Apr. 24, 2013).

We find that Petitioner timely filed its Joinder Motion in accordance with 37 C.F.R. § 42.122(b). We further determine that Petitioner has met its burden of showing that joinder is appropriate, at least because, as set forth

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