

Filed: November 28, 2022

Filed on behalf of Amazon.com, Inc.

By: Colin B. Heideman

Joseph R. Re

Daniel P. Hughes

Logan P. Young

KNOBBE, MARTENS, OLSON & BEAR, LLP

925 4th Avenue, Suite 2500

Seattle, WA 98104

Telephone: 206-405-2000

Facsimile: 206-405-2001

Email: BoxSEAZN2L1925P11@knobbe.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC.,
Petitioner,

v.

JAWBONE INNOVATIONS, LLC,
Patent Owner.

IPR2023-00285
U.S. Patent No. 8,326,611

**MOTION FOR JOINDER TO AND CONSOLIDATION WITH
RELATED *INTER PARTES* REVIEW IPR2022-01495
PURSUANT TO 35 U.S.C. § 315(c) AND 37 C.F.R. § 42.122(b)**

Table of Contents

I.	INTRODUCTION	1
II.	STATEMENT OF REASONS FOR RELIEF REQUESTED	2
	A. Legal Standard.....	2
	B. Petitioner’s Motion for Joinder is Timely	3
	C. Each Factor Weighs in Favor of Joinder	4
	1. Joinder is Appropriate.....	4
	2. Petitioners Propose No New Grounds of Unpatentability	5
	3. Joinder Will Not Unduly Burden or Negatively Impact the Apple IPR Trial Schedule	5
	4. Procedures to Simplify Briefing and Discovery	5
III.	<i>GENERAL PLASTIC</i> IS INAPPLICABLE	6
IV.	CONCLUSION.....	9

I. INTRODUCTION

Amazon.com, Inc. (“Petitioner”) respectfully submits this Motion for Joinder, together with a Petition for *Inter Partes* Review (“IPR”) of U.S. Patent No. 8,326,611 (“the ’611 Patent”) filed contemporaneously herewith. Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b), Petitioner requests institution of this IPR, and joinder and consolidation with IPR2022-01495 (“the Apple IPR”). That IPR challenges the same claims and has not yet been instituted.

Joinder here would be consistent with the overarching policy of securing “the just, speedy, and inexpensive resolution” of every IPR proceeding. 37 C.F.R. § 42.1(b). Petitioners’ Petition and the Apple Petition are substantively identical—they contain the same grounds, based on the same prior art combinations against the same claims. Thus, joinder would neither unduly complicate the Apple IPR nor delay its schedule.

To streamline discovery and briefing, Petitioner agrees to take an “understudy” role, actively participating substantively in the Apple IPR only if Apple terminates its involvement after joinder. (If Apple were to terminate its involvement prior to this Motion being granted, then Petitioner would withdraw this Motion so that Petitioner’s timely-filed Petition could be considered on its merits.)

Because joinder would promote judicial efficiency in determining patentability without prejudicing Patent Owner, the Board should grant this Motion.

II. STATEMENT OF FACTS

Patent Owner filed suit against Samsung on May 27, 2021, asserting seven patents. (Case No. 2:21-cv-00186, E.D. Tex.) Patent Owner filed suits against Apple and Google on September 23, 2021, and has asserted nine patents against each of them, including the seven patents also asserted against Samsung. (Case Nos. 6:21-cv-00985 and 6:21-cv-00984, W.D. Tex.) Patent Owner filed suit against Petitioner on Nov. 29, 2021, and has asserted the same nine patents. (Case No. 2:21-cv-00435, E.D. Tex., transferred to Case No. 5:22-cv-06727, N.D. Cal.) Samsung, Apple, and Google have filed IPR Petitions against each of the patents asserted against them.

For some of the patents asserted against it, Petitioner has filed independent petitions. For other asserted patents, including the '611 patent, Petitioner is filing substantively identical petitions to those previously filed and is seeking joinder.

III. STATEMENT OF REASONS FOR RELIEF REQUESTED

A. Legal Standard

The Board has the authority to join Petitioner as a party to the Apple IPR 35 U.S.C. § 315(c); *see also* 35 U.S.C. § 315(d) (Board also has the authority to consolidate proceedings). Whether a request for joinder should be granted is discretionary. *Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper 15 at 4 (PTAB, April 24, 2013).

B. Petitioner’s Motion for Joinder is Timely.

A petitioner may request joinder “no later than one month after the institution date” of the original IPR. 37 C.F.R. § 42.122(b). This is the “only timing requirement for a motion for joinder.” *Central Security Group — Nationwide, Inc. v. Ubiquitous Connectivity, LP*, IPR2019-01609, Paper 11, at 8-9 (PTAB Feb. 26, 2020). Motions for joinder that are filed before institution of the related IPR comply with this rule. *Id.* at 8; *see also, e.g., ZyXEL Communications Corp. v. Unm Rainforest Innovations*, IPR2021-00739, Paper 17 at 15 (PTAB Oct. 1, 2021) (motion for joinder not premature when filed before institution decision); *Dell Inc. v. Neodron Ltd.*, IPR2020-00731, Paper 9 at 5 (PTAB July 31, 2020); *Pfizer, Inc. v. Genentech, Inc.*, IPR2017-02063, Paper 25 at 3-4 (PTAB Feb. 21, 2018).

This Motion for Joinder is timely. Apple’s Petition was filed September 2, 2022, and has not been instituted as of this Motion’s filing. Thus, Petitioner is filing its joinder motion within the time limit enumerated in 37 C.F.R. § 42.122(b).

Petitioner requests that action on this Motion be held in abeyance until, and granted only if, the Board institutes the Apple IPR. *Central Security Group*, IPR2019-01609, Paper 11, at 9. If Apple terminates its involvement prior to institution, Petitioner requests that this Motion be withdrawn as moot and that Petitioner’s Petition be considered on the merits under Petitioner’s full control, as Petitioner is not estopped from requesting IPR of the ’611 patent at the time of this filing.

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.