

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CLOVER NETWORK, LLC

Petitioner

v.

CLOUDOFCHANGE, LLC

Patent Owner

IPR2023-00287

U.S. Patent No. 11,226,793

**PETITIONER'S MOTION FOR JOINDER OF IPR2022-01143
UNDER 35 U.S.C. § 315(c) AND 37 C.F.R. §§ 42.22 AND 42.122(b)**

I. INTRODUCTION

Petitioner Clover Network, LLC (“Clover”) filed a petition for *inter partes* review IPR2023-00287 (the “Clover IPR”) and respectfully moves for joinder of IPR2022-01143, filed by Lightspeed Commerce Inc. (the “Lightspeed IPR”). The Clover IPR is identical to the Lightspeed IPR in all substantive respects and presents the same invalidity grounds challenging the same claims. Petitioner will not seek to alter any grounds upon which the Board institutes the Lightspeed IPR and will seek no change in the existing schedule for that IPR proceeding. Upon institution of the Clover IPR, Petitioner respectfully requests an opportunity to join with the Lightspeed IPR solely as an “understudy,” where Petitioner would only assume an active role in the event Lightspeed were to withdraw from the proceeding.

II. BACKGROUND AND RELATED PROCEEDINGS

CloudofChange, LLC (“Patent Owner” or “PO” or “CloudofChange”) is the owner of U.S. Patent No. 11,226,793 (“the ’793 Patent”) and has sued Petitioner for patent infringement of the ’793 Patent. *CloudofChange, LLC v. Clover Network, Inc.*, 6:22-cv-00634 (W.D. Tex. June 17, 2022). CloudofChange previously sued Lightspeed Commerce Inc. (“Lightspeed”) for patent infringement of the ’793 Patent. *CloudofChange, LLC v. Lightspeed POS Inc.*, 6:21-cv-01102 (W.D. Tex. Oct. 22, 2021) (“the Lightspeed Litigation”). The Lightspeed Litigation is pending.

Lightspeed filed a petition for *inter partes* review of the '793 Patent on June 13, 2022. *Lightspeed Commerce Inc. v. CloudfChange, LLC*, IPR2022-01143, Paper No. 1 (P.T.A.B. June 13, 2022). The PTAB instituted *inter partes* review on November 10, 2022. *Id.*, Paper No. 8 (P.T.A.B. Nov. 10, 2022).

III. DISCUSSION

Petitioner respectfully requests that the Board exercise its discretion to grant joinder of the Clover IPR and the Lightspeed IPR proceedings pursuant to 35 U.S.C. § 315(c), 37 C.F.R. § 42.22, and 37 C.F.R. § 42.122(b). In support of this motion, Petitioner proposes consolidated filings and other procedural accommodations designed to streamline the proceedings.

A. JOINDER IS APPROPRIATE

Joinder is appropriate in this case because it is the most expedient way to secure the just, speedy, and inexpensive resolution of the two related proceedings. *See* 35 U.S.C. § 316(b); 37 C.F.R. § 42.1(b). Intentionally, the Clover IPR is substantively identical to the corresponding Lightspeed IPR in an effort to avoid multiplication of issues before the Board.¹ Given the duplicative nature of these

¹ In addition, the expert retained by Clover for the Clover IPR has also adopted the opinions of Lightspeed for the Lightspeed IPR. *Compare* IPR2022-01143, Exhibit 1002 (Gray Declaration), *with* IPR2023-00287, Exhibit 1002 (Mowry Declaration).

petitions, joinder of the related proceedings is appropriate. Further, Petitioner will agree to consolidated filings and discovery, and procedural concessions where and as appropriate.

1. SUBSTANTIVELY IDENTICAL PETITIONS

Petitioner represents that the Clover IPR is identical to the Lightspeed IPR in all substantive respects. It includes identical grounds, prior art, and analysis. Accordingly, if instituted, maintaining the Clover IPR proceeding separate from that of the Lightspeed IPR would entail needless duplication of effort.

2. CONSOLIDATED FILINGS

Because the grounds of unpatentability in the Clover IPR and the Lightspeed IPR are the same, the case is amenable to consolidated filings. Petitioner will agree to consolidated filings for all substantive papers in the proceeding (e.g., Reply to the Patent Owner's Response, Opposition to Motion to Amend, Motion to Exclude Evidence, Opposition to Motion to Exclude Evidence and Reply). Specifically, Petitioner will agree to incorporate its filings with those of Lightspeed in a consolidated filing, subject to the ordinary rules for one party on page limits. Lightspeed and Petitioner will be jointly responsible for the consolidated filings.

Petitioner agrees not to be permitted any arguments separate from those advanced by Petitioner and Lightspeed in the consolidated filings. These limitations avoid lengthy and duplicative briefing.

B. NO NEW GROUNDS OF PATENTABILITY

The Clover IPR raises no new grounds of unpatentability from those of the Lightspeed IPR because the petitions are identical in substance.

C. NO IMPACT ON IPR TRIAL SCHEDULE

The trial schedule for the Lightspeed IPR would not need to be delayed for joinder, and the joint proceeding would allow the Board and parties to focus on the merits in one consolidated proceeding, without unnecessary duplication of effort, and in a timely manner.

D. BRIEFING AND DISCOVERY WILL BE SIMPLIFIED

Joinder will simplify briefing and discovery because Petitioner seeks an order similar to that issued in *Motorola Mobility LLC v. Softview LLC*, IPR2013-00256, Paper 10 (P.T.A.B. June 20, 2013). As discussed above, Petitioner and Lightspeed will engage in consolidated filings and discovery, which will simplify the briefing and discovery process.

E. NO PREJUDICE TO CLOUDOFCHANGE IF PROCEEDINGS ARE JOINED

Petitioner proposes joinder to streamline the proceedings and reduce the costs and burdens on the parties. Petitioner believes joinder will achieve these goals for several reasons. First, joinder will most certainly decrease the number of papers the parties must file, by eliminating a duplicative proceeding. Second, joinder will also

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