

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON WEB SERVICES, INC.
AND AMAZON.COM SERVICES LLC,
Petitioners,

v.

Zentian Limited
Patent Owner.

Case IPR2023-01197
Patent No. 10,971,140

**PATENT OWNER'S PRELIMINARY RESPONSE
AND CONTINGENT JOINDER OPPOSITION**

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I. The Board should not institute and join Amazon's Petition unless Amazon is bound by the same *Sotera* stipulation to which Apple agreed 1

EXHIBIT LIST

Exhibit No.	Description
2001	Amazon's District Court Amended Invalidity Contentions
2002	Scheduling Order in <i>Zentian Ltd. v. Amazon.com, Inc.</i> , 6:22-cv-00123 (W.D. Tex.)
2003	Correspondence between counsel for Zentian and Amazon re: <i>Sotera</i> stipulation

I. The Board should not institute and grant joinder of Amazon's Petition unless Amazon is bound by the same *Sotera* stipulation to which Apple agreed

Amazon Web Services, Inc. and Amazon.com Services LLC ("Amazon") and Zentian are currently involved in litigation with respect to the '140 Patent before the Western District of Texas. The complaint in that proceeding was served no later than April 25, 2022, more than one year before the date on which Amazon filed its Petition in this proceeding. *Compare Zentian Ltd. v. Amazon.com, Inc.*, 6:22-cv-00123 (W.D. Tex.), Dkt. 15 *with* Paper 2 (Petition filed on July 12, 2023).

Amazon's Petition in this proceeding thus violates the statutory time bar set forth in 35 U.S.C. § 315(b). The Petition therefore cannot be instituted unless the Board grants Amazon's accompanying motion for joinder with respect to IPR2023-00037. *See* § 315(c); Paper 3 (joinder motion).

Moreover, Amazon has served invalidity contentions in the district court proceeding in which Amazon presents many of the same art and arguments raised in its Petition. *Compare* Ex. 2001 at 8-10 (relying on Jiang¹, Robinson, and Wrench) *with* Petition at 7 (relying on same references for Petition's grounds). The district court proceeding is not stayed, and is set for trial on September 23, 2024. Ex. 2002 at 3 (district court scheduling order). Amazon's invalidity expert report is

¹ Amazon's invalidity contentions refers to "Jiang II" for the reference corresponding to Jiang in this proceeding.

due by May 2, 2024, and Zentian's rebuttal report is due on May 30, 2024. *Id.*

Meanwhile, the underlying proceeding that Amazon seeks to join is on track for an oral hearing on March 13, 2024, and a final written decision by June 12, 2024.

Accordingly, *Fintiv* factors 1-5 here warrant non-institution and denial of joinder.

Fintiv factor 6 likewise warrants non-institution unless the Board requires Amazon to enter the same *Sotera* stipulation to which Apple agreed, and on which the Board relied, in underlying proceeding IPR2023-00037, which Amazon seeks to join.

In particular, in that proceeding, Apple mooted Zentian's *Fintiv*-based non-institution arguments by committing to "not pursue in the parallel district court proceeding the same grounds as in the Petition or any grounds that could have reasonably been raised in the pending Petition." IPR2023-00037, Paper 9 at 1 (the *Sotera* stipulation). The Board relied on Apple's *Sotera* stipulation as a basis for granting institution. IPR2023-00037, Paper 10 at 9-10. Notably, because Apple provided a *Sotera* stipulation, the Board did not assess Apple's Petition under the "compelling merits" standard that would have applied without Apple's *Sotera* stipulation. *Commscope Techs. LLC v. Dali Wireless, Inc.*, IPR2022-01242, Paper 23 at 4 (Feb. 27, 2023) (precedential). "The compelling merits standard is a higher

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