

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EBAY, INC.,

Petitioner,

v.

LEXOS MEDIA IP, LLC,

Patent Owner.

Case IPR2024-00336

U.S. Patent No. 5,995,102

**MOTION FOR JOINDER TO
INTER PARTES REVIEW IPR2023-01000**

TABLE OF CONTENTS

I.	STATEMENT OF THE PRECISE RELIEF REQUESTED	1
II.	STATEMENT OF MATERIAL FACTS	2
III.	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	3
1.	Joinder is Appropriate with the Amazon IPR	6
2.	Petitioner Proposes No New Grounds of Unpatentability	7
3.	Joinder Will Not Unduly Burden or Negatively Impact the Amazon IPR Trial Schedule.....	8
4.	Procedures to Simplify Briefing and Discovery	9
IV.	GENERAL PLASTIC IS INAPPLICABLE AND FAVORS PETITIONER.....	11
V.	CONCLUSION	13

I. STATEMENT OF THE PRECISE RELIEF REQUESTED

eBay Inc. (“Petitioner”) respectfully submits this Motion for Joinder (“Motion”) together with a Petition for *Inter Partes* Review of U.S. Patent No. 5,995,102 (the “eBay Petition”) filed contemporaneously herewith. Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b), Petitioner requests institution of an *inter partes* review and joinder with the *inter partes* review in *Amazon.com, Inc. v. Lexos Media IP, LLC*, IPR2023-01000 (the “Amazon IPR”) in view of the Patent Trial and Appeal Board’s (the “Board”) decision to institute trial on December 12, 2023. (Amazon IPR, Paper 9.) Counsel for eBay has conferred with counsel for Amazon.com, Inc. (“Amazon”), and counsel for Amazon does not object to eBay joining IPR2023-01000.

Petitioner’s request for joinder is timely under 37 C.F.R. § 42.122(b) as it is submitted no later than one month after the December 12, 2023 institution date of the Amazon IPR. The eBay Petition is also narrowly tailored to the same claim, prior art, and grounds for unpatentability that are the subject of the Amazon IPR. In addition, Petitioner is willing to streamline discovery and briefing, as well as follow the Amazon IPR Scheduling Order.

Petitioner submits that joinder is appropriate because it will not unduly burden or prejudice the parties to the Amazon IPR while efficiently resolving whether a

single claim (claim 72) of U.S. Patent No. 5,995,102 (the “’102 Patent”) is valid and in a single proceeding.

II. STATEMENT OF MATERIAL FACTS

1. On June 5, 2023, Amazon filed a petition for *inter partes* review in IPR2023-01000 requesting cancellation of claim 72 of the ’102 Patent.

2. On June 22, 2022, Lexos Media IP, LLC (“Lexos” or “Patent Owner”) filed a civil action against eBay, Inc., Case No. 6:22-cv-00648, in the United States District Court for the Western District of Texas (“the Western District Case”). Patent Owner filed a second amended complaint in the Western District Case on May 16, 2023.

3. On December 6, 2023, Judge Albright issued an Order granting Petitioner eBay’s request to transfer venue from the Western District of Texas to the Northern District of California. The Northern District of California litigation is pending, and is stylized *Lexos Media IP, LLC v. eBay, Inc.*, No. 3:23-cv-06314-LJC (N.D. Cal.) (the “Northern District Litigation”).

4. On December 12, 2023, the Board instituted Amazon’s petition for *inter partes* review in IPR2023-01000, finding that “there is a reasonable likelihood that Petitioner would prevail with respect to claim 72 on at least one of the grounds raised in the Petition.” *Amazon IPR*, Paper 9 at 36.

III. STATEMENT OF REASONS FOR RELIEF REQUESTED

A. Legal Standard

The Board has the authority under 35 U.S.C. § 315(c) to join a properly filed *inter partes* review petition to an instituted *inter partes* review proceeding. *See* 35 U.S.C. § 315(c). A motion for joinder must be filed within one month of the Board instituting an original *inter partes* review. 37 C.F.R. § 42.122(b). In deciding whether to exercise its discretion and permit joinder, the Board considers several factors, including: (1) the reasons why joinder is appropriate; (2) whether the new petition presents any new grounds of unpatentability; (3) what impact, if any, joinder would have on the trial schedule for the existing review; and (4) how briefing and discovery may be simplified. *See Kyocera Corporation v. Softview LLC*, IPR2013-00004, Paper 15 at 4 (April 24, 2013); Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019), 76-78.

B. Petitioner's Motion for Joinder is Timely

This Motion for Joinder is timely because it is filed within one month of the December 12, 2023 institution decision of the Amazon IPR. 37 C.F.R. § 42.122(b). Further, the one-year bar set forth in 35 U.S.C. § 315(b) and 37 C.F.R. § 42.101(b) does not apply to the eBay Petition because this Motion for Joinder is filed concurrently with the eBay Petition. 37 C.F.R. § 42.122(b).

C. Each Factor Weighs in Favor of Joinder

As explained in detail below, each of the four factors considered by the Board weighs in favor of joinder. Specifically, the eBay Petition does not present any new

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