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Paper 10
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

BISCOTTI INC.,
Patent Owner.

Case IPR2015-01053
Patent 8,144,182 B2

Before MICHELLE R. OSINSKI, NEIL T. POWELL, and KEVIN W. CHERRY, *Administrative Patent Judges*.

POWELL, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Motion for Joinder
And Denying Institution of *Inter Partes* Review
37 C.F.R. §§ 42.108, 42.122

I. INTRODUCTION

Microsoft Corporation ("Petitioner") filed a Petition (Paper 2, "Pet.") to institute an *inter partes* review of claims 1, 4, and 5 of U.S. Patent No. 8,144,182 B2 (Ex. 1001, "the '182 patent"). On the same day, Petitioner also filed a Motion for Joinder, requesting joinder of this proceeding with a related and instituted proceeding, *Microsoft Corp. v. Biscotti Inc.*, Case IPR2014-01458 ("'1458 IPR"). Paper 3 ("Joinder Motion"). Petitioner filed its Joinder Motion within one month after institution of a trial in the '1458 IPR, as required by 37 C.F.R § 42.122(b). Patent Owner Biscotti Inc. filed a Preliminary Response to the Petition. Paper 9 ("Prelim. Resp."). Patent Owner also filed an Opposition to Petitioner's Motion for Joinder. Paper 8 ("Opp. To Joinder").

We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may be authorized only if "the information presented in the petition . . . and any [preliminary] response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least one of the claims challenged in the petition." 35 U.S.C. § 314(a).

For the reasons below, we determine that Petitioner has not shown that joinder is warranted in this instance. We also deny the Petition and do not institute *inter partes* review as to claims 1, 4, and 5 of the '182 patent.

A. Related Proceedings

Patent Owner has asserted the '182 patent against Petitioner in *Biscotti Inc. v. Microsoft Corp.*, Case No. 2:13-cv-01015-JRG (E.D. Tex.). Paper 6, 1; Pet. 4. Also, in the '1458 IPR, Petitioner filed its Petition ("'1458 Petition") on September 6, 2014 requesting *inter partes* review of claims 6–8, 12, 17–23, 38–42, 44, 45, 50, 52, and 53 of the '182 patent.

Microsoft Corp. v. Biscotti Inc., Case IPR2014-01458, Paper 1 (Sept. 6, 2014). On March 19, 2015, in the '1458 IPR, we instituted an *inter partes* review of claims 6, 7, 12, 17–23, 38, 39, 41, 42, 44, 45, 50, 52, and 53, and declined to institute an *inter partes* review of claims 8 and 40. *Microsoft Corp. v. Biscotti Inc.*, Case IPR2014-01458, slip op. 32–33 (PTAB Mar. 19, 2015) (Paper 10) ("'1458 Institution Decision"). Additionally, in *Microsoft Corp. v. Biscotti Inc.*, Case IPR2014-01459 ("'1459 IPR"), Petitioner filed a Petition ("'1459 Petition") on September 6, 2014 requesting *inter partes* review of claims 1, 4, 5, and 69–74 of the '182 patent. *Microsoft Corp. v. Biscotti Inc.*, Case IPR2014-01459, Paper 1 (Sept. 6, 2014). On March 19, 2015, in the '1459 IPR, we instituted an *inter partes* review of claims 69–71 and 74, and declined to institute an *inter partes* review of claims 1, 4, 5, 72, and 73. *Microsoft Corp. v. Biscotti Inc.*, Case IPR2014-01459, slip op. 26–27 (PTAB Mar. 19, 2015) (Paper 11) ("'1459 Institution Decision"). Subsequently, Petitioner filed the present Petition on April 17, 2015, challenging claims 1, 4, and 5 of the '182 patent.

The '182 patent also is involved in an instituted *inter partes* review in *Microsoft Corp. v. Biscotti Inc.*, Case IPR2014-01457. Additionally, the '182 patent is the subject of petitions filed by Petitioner in *Microsoft Corp. v. Biscotti Inc.*, Case IPR2015-01052, and *Microsoft Corp. v. Biscotti Inc.*, Case IPR2015-01054. Pet. 4.

B. The '182 Patent

The '182 patent discloses "tools and techniques for providing video calling solutions." Ex. 1001, Abst. The '182 patent shows one video communication system 100 in Figure 1A, reproduced below.

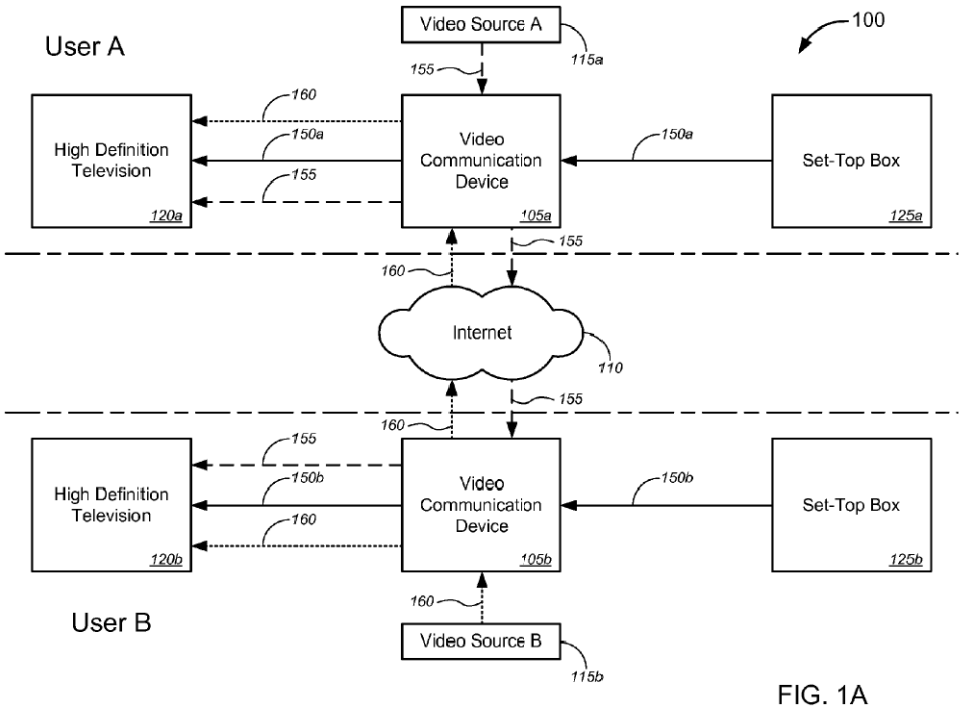

FIG. 1A

Figure 1A shows various components of video communication system 100, including video communication devices 105a and 105b, Internet 110, video sources 115a and 115b, display devices 120a and 120b, and set-top boxes 125a and 125b. *Id.* at col. 5, l. 40–col. 6, l. 13. The '182 patent discloses that video communication device 105a captures video stream 155 from video source 115a, and that video communication device 105b captures video stream 160 from video source 115b. *Id.* at col. 5, ll. 49–56. Each video communication device 105a and 105b can output to the connected display device 120a or 120b a video stream, which may have various compositions. *Id.* at col. 5, ll. 56–62.

As shown in Figure 1A, video communication device 105a may be connected between set-top box 125a and display device 120a. *Id.* at col. 5, ll. 62–65. The '182 patent indicates that this arrangement allows video communication device 105a to pass audiovisual stream 150a from set-top

box 125a through to display device 120a. *See id.* at col. 5, l. 62–col. 6, l. 1. The '182 patent discloses that video communication device 105a (additionally or alternatively) may receive audio video stream 160 from video communication device 105b, and that video communication device 105a may forward video stream 160 to display device 120a. *Id.* at col. 6, ll. 1–6. This may happen as part of a video call. *Id.* at col. 6, ll. 1–5. The '182 patent discloses that video communication device 105a, in some cases, may cause simultaneously the display of audiovisual stream 150a from set-top box 125a and stream 160 from video communication device 105b. *Id.* at col. 6, ll. 13–18. This allows a user to watch television while participating in a video call. *Id.* at col. 6, ll. 18–20.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A system for real-time, high-definition video communication, the system comprising:
>
> a first video communication device; and
>
> a second video communication device in communication with the first video communication device over the Internet;
>
> wherein the first video communication device comprises:
>
> a high-definition multimedia ("HDMI") input interface configured to receive high-definition audiovisual input from a set-top box;
>
> an HDMI output interface configured to provide high-definition audiovisual output for display on a high-definition television;
>
> a speaker to provide audible output;

a wireless network interface in communication with a wireless local area network to provide communication with the second video communication device over the Internet;

one or more microphones to capture audio input from a user of the first video communication device;

a high-definition video camera to capture a video stream of the user;

at least one processor; and

a storage medium in communication with the at least one processor, the storage medium having encoded thereon a set of instructions executable by the at least one processor to control operation of the first video communication device, the set of instructions comprising:

instructions for receiving, via the wireless network interface, a connection request from a communication server on the Internet, the connection request originating from the second video communication device;

instructions for notifying the user of the communication request;

instructions for receiving user input accepting the connection request;

instructions for receiving a video call over a peer-to-peer Internet communication session with the second video communication device, via the wireless network interface;

instructions for transmitting an audio watermark signal through the HDMI output interface;

instructions for determining whether a speaker of the high-definition television is powered on and

enabled to play audio output from the first video communication device, based on reception of the audio watermark signal through at least one of the one or more microphones;

instructions for receiving a high-definition set-top box audiovisual stream from the set-top box, wherein set-top box audiovisual stream comprises a set-top box video stream and a set-top box audio stream, the set-top box video stream having a display area comprising a plurality of pixels defining a display resolution of the set-top box video stream;

instructions for receiving a remote audiovisual stream from the second video communication device over the wireless network interface, wherein the remote audiovisual stream comprises a remote video stream and a remote audio stream;

instructions for detecting the display resolution of set-top box video stream;

instructions for setting a display resolution of the remote video stream, based at least in part on one or more factors selected from the group consisting of the detected display resolution of the set-top box video stream, a bandwidth of a connection between the first video communication device and the second video communication device, and a user-specified setting;

instructions for modifying the set-top box video stream, in response to receiving the video call;

instructions for allocating at least a portion of the display area of the set-top box video stream, comprising at least some of the plurality of pixels, for displaying at least a portion of the

remote video stream, to produce a consolidated high-definition output video stream comprising at least a portion of the remote video stream;

instructions for transmitting the consolidated high-definition output video stream on the HDMI output interface, for display on the high-definition television;

instructions for producing a consolidated audio output stream comprising at least the remote audio stream;

instructions for transmitting the consolidated audio output stream on the HDMI output interface, based on a determination that the speaker of the high-definition television is powered on and enabled to play audio output from the first video communication device;

instructions for controlling the camera to capture a captured video stream;

instructions for controlling the one or more microphones to capture a captured audio stream;

instructions for canceling echo in the captured audio stream;

instructions for encoding the captured video stream and the captured audio stream as a series of packets for transmission over the Internet; and

instructions for transmitting the series of packets over the peer-to-peer communication session.

Ex. 1001, col. 31, l. 2–col. 32, l. 42.

II. DECISION ON THE MOTION FOR JOINDER

A. Background

The statutory provision governing joinder of *inter partes* review proceedings is 35 U.S.C. § 315(c), which reads as follows:

> (c) JOINDER.—If 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 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an inter partes review under section 314.

Section 315(b) of the statute generally bars institution of *inter partes* review when the petition is filed more than one year after the petitioner (or petitioner's real party in interest or privy) is served with a complaint alleging infringement of the patent. 35 U.S.C. § 315(b); 37 C.F.R. § 42.101(b). That one-year time bar, however, does not apply to a request for joinder. 35 U.S.C. § 315(b) (final sentence); 37 C.F.R. § 42.122(b). This is an important consideration here because Petitioner was served with a complaint asserting infringement of the '182 patent more than one year before filing the Petition in this proceeding. *See* Joinder Motion 2–4. As noted above, the '182 patent is involved in a district court proceeding in the U.S. District Court of the Eastern District of Texas captioned *Biscotti Inc. v. Microsoft Corp.*, Case No. 2:13-cv-01015-JRG (E.D. Tex.) ("District Court Proceeding"). Joinder Motion 2; Pet. 3–4. Petitioner represents that the complaint in the District Court Proceeding was served on Petitioner on November 27, 2013. Joinder Motion 2. As noted above, the present Petition was filed on April 17, 2015. Thus, absent joinder of this proceeding to the

'1458 IPR, institution based on the current Petition is barred under 35 U.S.C. § 315(b).

Joinder may be authorized when warranted, but the decision to grant joinder is discretionary. 35 U.S.C. § 315(c); 37 C.F.R. § 42.122(b). As indicated in the legislative history, the Board will determine whether to grant joinder on a case-by-case basis, taking into account the particular facts of each case. *See* 157 Cong. Rec. S1376 (daily ed. Mar. 8, 2011) (statement of Sen. Kyl) (when determining whether and when to allow joinder, the Office may consider factors including the breadth or unusualness of the claim scope, claim construction issues, and consent of the patent owner). When exercising that discretion, the Board is mindful that patent trial regulations, including the rules for joinder, must be construed to secure the just, speedy, and inexpensive resolution of every proceeding. 37 C.F.R. § 42.1(b).

As the moving party, Petitioner has the burden of proof in establishing entitlement to the requested relief. 37 C.F.R. 42.20(c).

B. Analysis

Petitioner notes that we declined to institute *inter partes* review in the '1459 IPR with respect to Petitioner's challenge of claims 1, 4, and 5 as obvious over Kenoyer[1] and the HDMI Specification[2]. Pet. 1; *see* '1459 Institution Decision 18–21, 26. As Petitioner acknowledges, we denied Petitioner's challenge because the '1459 Petition presented inadequate evidence and explanation in support of Petitioner's contentions about the public availability of the HDMI Specification prior to the effective filing

[1] U.S. Patent No. 7,907,164 B2 (Exhibit 1006).
[2] Hitachi, Ltd. et al., *High-Definition Multimedia Interface, Specification Version 1.3a* (2006) (Exhibit 1007).

date of the '182 patent.[3] '1459 Petition 12–13; '1459 Institution Decision 18–21.

> In the present Petition, Petitioner explains that:
>
> > Petitioner presents . . . the grounds it presented in the -01459 proceeding regarding claims 1, 4, and 5; namely, that these claims would have been considered obvious based on Kenoyer in view of the HDMI Specification version 1.3a. In this petition, however, Petitioner also presents additional evidence establishing more than a reasonable likelihood that [the HDMI Specification] is prior art to the '182 patent claims. Specifically, Petitioner presents Exhibit 1044, the Declaration of Steve Venuti, the now retired president of HDMI Licensing, LLC, an organization that developed and promoted the HDMI Specification.
>
> Pet. 1.

Petitioner asserts that it could not have provided this declaration of Mr. Venuti with the '1459 Petition "due to the policies of the sponsor of [the HDMI Specification] (i.e., HDMI Licensing, LLC)." Pet. 2 (citing Ex. 1044 ¶¶ 1–11).

In support of its argument that we should join the present proceeding to the '1458 IPR, Petitioner cites 37 C.F.R. § 42.1(b), which provides that our rules must be "construed to secure the just, speedy, and inexpensive resolution of every proceeding." Joinder Motion 14. Petitioner asserts that "[j]oining the -01053 and -01458 proceedings will 'ensure the just, speedy, and inexpensive resolution' of closely related claims of the '182 Patent in a single proceeding, with no discernible prejudice to [Patent Owner]." *Id.* Petitioner argues that joining the instant proceeding to the '1458 IPR would

[3] For the same reason, we also denied other challenges that Petitioner raised in the '1459 Petition to claims 1, 4, and 5 based in part on the HDMI Specification. '1459 Institution Decision 22–26.

further a principal objective of the America Invents Act by simplifying the copending district court proceeding between the parties. *Id.* at 6–8. Petitioner argues that the '1459 Institution Decision did not address the merits of the challenge based on the HDMI Specification, and that there is a strong public interest in the Board addressing challenges to closely related claims of the '182 patent in one proceeding. Pet. 2–3 (citing *Cisco, Inc. v. Crossroads Sys., Inc.*, Case IPR2014-01544, slip op. 13–14 (PTAB Apr. 3, 2015) (Paper 9) (declining Patent Owner's invitation to deny institution under 35 U.S.C. § 325(d) where prosecution and reexaminations involved similar art, but that art was not addressed substantively during prosecution and reexaminations); *Kaiser Aluminum v. Constellium Rolled Products Ravenswood, LLC*, Case IPR2014-01002, slip op. 14–15 (PTAB Dec. 29, 2014) (Paper 11) ("[t]he permissive language of § 325(d) [] does not prohibit instituting *inter partes* review based on prior art previously presented to the Office.")); Joinder Motion 7–8.

Petitioner contends that joinder would not complicate unduly the '1458 IPR. Joinder Motion 8–11. Petitioner asserts that this case involves the same parties, same patent, most of the same cited references, and much of the same evidence as the '1458 IPR. *Id.* at 8. Petitioner contends that "granting joinder results in essentially one new substantive issue—whether the HDMI Specification (Ex. 1007) discloses the HDMI element." *Id.* at 9.

Petitioner argues that joinder should not delay final determination in the '1458 IPR. *Id.* at 11–12. Petitioner contends that "adding HDMI to IPR2014-01458 is straightforward." *Id.* at 11. Petitioner notes that, when it filed the Joinder Motion on April 17, 2015, there remained nearly two months before Due Date 1 of the '1458 IPR, as well as over six months

before Due Dates 6 and 7 of the '1458 IPR. *Id.* at 11–12. Additionally, the Joinder Motion notes that Petitioner was willing to extend Due Date 1 of the '1458 IPR. *Id.* at 12.

Petitioner contends that instituting and joining would not prejudice Patent Owner. *Id.* at 10–12, 14–15. In support of this argument, Petitioner notes that Patent Owner "has, since the petition in the -01459 proceeding, been aware of the basis of Petitioner's challenge (*i.e.*, Kenoyer in view of the HDMI Specification v1.3a)." *Id.* at 10–11. Petitioner also asserts that its willingness to extend the schedule avoids prejudice to Patent Owner. *Id.* at 12. Additionally, Petitioner asserts that "[j]oinder will not affect Patent Owner's ability to enforce its patent; it has agreed to stay the district court litigation." *Id.* at 15. Petitioner asserts that if we deny joinder, Petitioner would suffer prejudice by incurring higher costs and additional delays because Petitioner would need to litigate the challenged claims in district court. *Id.*

Petitioner asserts that this case resembles prior cases where the Board has granted joinder, not cases where the Board has denied joinder. Joinder Motion 13–14. Petitioner argues that this case does not resemble cases "where the Board has noted the risk of 'petitioners [waiting] to unveil strategically their best prior art and arguments in serial petitions.'" *Id.* at 13 (citing *Conopco, Inc. v. Procter & Gamble Co.*, Case IPR2014-00628, slip op. 5 (PTAB Mar. 20, 2015) (Paper 23)). Instead, Petitioner argues that this case resembles *Ariosa Diagnostics v. Isis Innovation Ltd.*, Case IPR2012-00022, in which it was deemed that a later-filed petition addressed an "oversight" in an earlier-filed petition. *Id.*; *Ariosa Diagnostics v. Isis*

Innovation Ltd., Case IPR2012-00022, slip op. 6–7 (PTAB Oct. 31, 2013) (Paper 104).

Patent Owner contends that the present Petition is a "second bite at the apple" using the '1459 Institution Decision as a roadmap to remedy the deficiency in Petitioner's prior challenge. Opp. to Joinder 1 (citing *Butamax Advanced Biofuels LLC v. Gevo, Inc.*, Case IPR2014-00581, slip op. 13 (PTAB Oct. 14, 2014) (Paper 8)); Prelim. Resp. 1–2. Patent Owner argues that the present case resembles a number of cases where the Board denied institution of petitions directed at addressing deficiencies in prior petitions. Opp. to Joinder 13–15; Prelim. Resp. 13–16.

Patent Owner argues that joinder would complicate unduly the '1458 IPR. Opp. to Joinder 6–9; Prelim. Resp. 7–9. Patent Owner argues that joinder would add numerous issues and extensive briefing and evidence. *Id.* Patent Owner notes that joinder would add an obviousness challenge and all of the issues that apply to obviousness challenges. Opp. to Joinder 8; Prelim. Resp. 8. Patent Owner also notes that joinder, which would introduce the HDMI Specification into the '1458 IPR, adds a dispute regarding the public accessibility of the HDMI Specification. *Id.* Patent Owner further notes that joinder would add a new declarant (Mr. Venuti) that Patent Owner would have to depose. Opp. to Joinder 8; Prelim. Resp. 7. Additionally, Patent Owner argues that evaluating Petitioner's allegations that the HDMI Specification teaches certain limitations of the challenged claims will be more complicated than Petitioner suggests. Opp. to Joinder 7–8.

Patent Owner argues that joinder would also delay the '1458 IPR and prejudice Patent Owner. Opp. to Joinder 10–13; Prelim. Resp. 9–11. Patent

Owner notes that it has already deposed Petitioner's declarant, Dr. Houh, and filed its Patent Owner Response in the '1458 IPR. Prelim. Resp. 9. Patent Owner asserts that joinder would require Patent Owner to depose Dr. Houh again, and to file another set of responses. *Id.* at 9–10. Patent Owner argues that joinder is not workable, given the upcoming dates for the oral argument and the final written decision in the '1458 IPR. *Id.* at 10.

Patent Owner contends that joinder would prejudice it by forcing it to defend against challenges that would otherwise be barred under 35 U.S.C. § 315(b). Prelim. Resp. 9. Patent Owner argues that joinder would subject it to either nearly impossible deadlines or delays in resolution of the '1458 IPR, delaying relief on Patent Owner's infringement claims. *Id.* at 10. Regarding Petitioner's assertion that Patent Owner agreed to stay the copending district court proceeding, Patent Owner asserts that it did so without knowledge that Petitioner subsequently would file the present Petition and Joinder Motion. *Id.* Patent Owner also argues that joinder would give Petitioner "an unfair advantage by allowing it to use [Patent Owner's] Preliminary Responses, its Patent Owner Responses, its already-conducted deposition of Dr. Houh, and the Board's institution decisions as blueprints for [the present Petition]." *Id.* at 10–11.

Patent Owner further asserts that Petitioner's arguments about the district court having to address the validity of the challenged claims do not warrant joinder. Opp. to Joinder 5–6. With respect to Petitioner's citation of Rule 42.1(b), under which the rules must be "construed to secure the just, speedy, and inexpensive resolution of every proceeding," Patent Owner argues that "37 C.F.R. § 42.1(b) pertains to the just, speedy, and inexpensive resolution of proceedings before the *Patent Trial and Appeal Board*, and not

to . . . the parties' disputes generally.'" *Id.* at 5 (citing *ZTE Corp. v. ContentGuard Holdings Inc.*, Case IPR2013-00454, slip op. 7 (PTAB Sept. 25, 2013) (Paper 12)). Patent Owner argues that contrary to Petitioner's argument that there is a strong public interest in the Board adjudicating challenges of closely related claims in one proceeding, our rules expressly contemplate instituting proceedings on some claims of a patent, while denying institution of other claims, irrespective of how "closely related" the claims are. *Id.* (citing 37 C.F.R. § 42.108(a)). Additionally, Patent Owner argues that having to litigate the validity of the challenged claims at the district court does not prejudice Petitioner. *Id.* at 5–6. Because we previously declined to institute *inter partes* review on claims 8, 27, 35, and 40, and because Petitioner does not challenge those claims before us now, Patent Owner argues that Petitioner will have to litigate the validity of those claims at the district court, regardless of whether we grant joinder here. *Id.* at 5–6, 13.

Regarding Petitioner's assertion that the new evidence it submits was unavailable when the '1459 Petition was submitted, Patent Owner argues that Petitioner "offers no explanation why it needed a declaration from Mr. Venuti specifically." Prelim. Resp. 11. Patent Owner further asserts that Petitioner says nothing about prior availability of Exhibit 1045, which Petitioner submits in connection with Mr. Venuti's Declaration to bolster its contention that the HDMI Specification was publicly accessible. *Id.* at 12. Additionally, Patent Owner argues that Petitioner "exercised no diligence in attempting to secure the additional information regarding the alleged public availability of the [HDMI Specification]." *Id.* In support of this contention, Patent Owner notes that "[i]n connection with [Petitioner's] attempt to

submit this information as supplemental information in the ['1457 IPR], Microsoft stated that it merely 'attempted to contact HDMI Licensing, LLC prior to submitting its petition but [it] did not speak with anyone with the organization at that time.'" *Id.* at 12–13 (citing '1457 IPR, Paper 14, 6 n. 4).

Patent Owner also argues that the cases on which Petitioner relies are inapplicable. Opp. to Joinder 9–10; Prelim. Resp. 16. For example, Patent Owner contends that, unlike *Ariosa*, the deficiencies in the '1459 Petition did not stem from an "oversight." Opp. to Joinder 9–10. Instead, Patent Owner argues, "Petitioner deliberately selected its arguments and evidence the first time, and now that it has lost, it went back to the well to come up with something new." *Id.* at 10.

In view of the circumstances of this case, we are not persuaded that Petitioner has established sufficiently that joinder to the '1458 IPR is warranted. Granting joinder would complicate the substantive issues in the '1458 IPR significantly more than Petitioner suggests. We do not agree with Petitioner's assertion that "granting joinder results in essentially one new substantive issue—whether the HDMI Specification (Ex. 1007) discloses the HDMI element." Joinder Motion 9. Joinder would add to the '1458 IPR obviousness challenges to claims 1, 4, and 5, thereby adding for each of these challenges the numerous issues that any obviousness analysis entails. Additionally, the challenge raised in the present Petition does not rely on the same references as the pending challenges in the '1458 IPR. Unlike the challenge raised in the present Petition, no pending claim challenge in the '1458 IPR relies on the HDMI Specification. *See* '1458 Institution Decision 33–34. Indeed, joinder would add a significant dispute regarding the public accessibility of the HDMI Specification.

Additionally, granting joinder would add significant procedural complications and delay resolution of the '1458 IPR. In the '1458 IPR, Patent Owner has filed its Response, and the date for the oral hearing is only weeks away. Granting joinder would require adjusting the schedule to allow Patent Owner discovery on the issues presented by the challenge in the present Petition. Petitioner does not offer a practical way to accommodate the additional discovery and briefing without rushing significantly all involved or delaying the final written decision beyond its current due date of March 19, 2016.

Furthermore, Petitioner's assertions demonstrate that the present Petition is directed at addressing shortcomings in the '1459 Petition that we identified in the '1459 Institution Decision. *See, e.g.*, Pet. 1–3. Petitioner asserts that it needs to do so because Mr. Venuti's declaration could not have been provided with the '1459 Petition. *See, e.g.*, *id.* at 2; Joinder Motion 4–5, 13–14. Assuming, *arguendo*, Mr. Venuti's declaration was unavailable when the '1459 Petition was filed, this does not persuade us that we should grant Petitioner a second bite at the apple, at the expense of significantly complicating and extending the '1459 IPR. Regardless of whether Petitioner could have acquired Mr. Venuti's declaration when it prepared the '1459 Petition, Petitioner had control of how it gathered and presented other evidence regarding the public accessibility of the HDMI Specification. With respect to the evidence that the '1459 Petition did present, Petitioner gave virtually no explanation of the significance of the evidence, providing only the conclusory assertion that "[t]he public availability and publication of the HDMI Specification is shown by numerous sources," after which Petitioner listed certain evidence without any further explanation. '1459 Pet. 12–13.

We do not agree with Petitioner's characterization of this case as akin to *Ariosa*, where it was deemed that a flaw in an earlier petition resulted from a "minor oversight." *See Ariosa Diagnostics v. Isis Innovation Ltd.*, Case IPR2012-00022, slip op. 6–7 (PTAB Oct. 31, 2013) (Paper 104); Joinder Motion 13.

In view of the particular facts and issues before us in the instant case, we exercise our discretion to deny Petitioner's Joinder Motion.

III. DECISION ON THE PETITION

Institution of *inter partes* review is barred when the petition is filed more than one year after the petitioner is served with a complaint alleging infringement of the patent. 35 U.S.C. § 315(b); 37 C.F.R. § 42.101(b). The present Petition was filed more than one year after Petitioner was served with a complaint alleging infringement of the '182 patent. *See* Joinder Motion 2–4. Accordingly, in view of our decision to deny Petitioner's Joinder Motion, we deny the present Petition because it was not filed within the time limits imposed under 35 U.S.C. § 315(b).

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's Motion for Joinder is *denied*;

FURTHER ORDERED that the Petition is *denied* and no trial is instituted.

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