

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ANKER INNOVATIONS LTD.,
Petitioner

v.

MYPAQ HOLDINGS LTD.,
Patent Owner

Case IPR2022-01131
Patent 7,675,759

**PETITIONER'S MOTION FOR JOINDER
UNDER 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.22, and 42.122(b)**

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I. STATEMENT OF PRECISE RELIEF REQUESTED

Anker Innovations Ltd. (“Anker”) respectfully submits this Motion for Joinder together with a Petition for *Inter Partes* Review in IPR2022-01131 (“Anker’s Petition”) challenging U.S. Patent No. 7,675,759 (“the ’759 patent”).

On December 14, 2021, Samsung Electronics Co., Ltd. (“Samsung”) and Dell Technologies Inc. (“Dell”) filed an earlier petition in IPR2022-00312 (“the Samsung/Dell IPR”) that also challenges the ’759 patent. The Samsung/Dell IPR was instituted on May 23, 2022. Counsel for Anker conferred with counsel for Samsung/Dell, and Samsung/Dell does not oppose joinder.

As such, Anker requests *inter partes* review and joinder with the Samsung/Dell IPR pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b). Joinder is appropriate because Anker’s Petition is substantively identical to the petition in the Samsung/Dell IPR—challenging the same claims of the ’759 patent on the same grounds while relying on the same prior art, arguments, and evidence (i.e., Anker’s Petition is a “copycat” petition). If, however, the Samsung/Dell IPR is terminated prior to institution, Anker respectfully requests that this motion be withdrawn, and Anker’s petition be instituted against the ’759 patent.

Anker is filing this motion for joinder rather than a standalone petition, and is doing so expeditiously. *See, e.g., General Plastic Indus. Co. v. Cannon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 16 (PTAB Sept. 6, 2017) (precedential) (“In

exercising discretion...we are mindful of the goals of the AIA—namely, to improve patent quality and make the patent system more efficient by the use of post-grant review procedures”); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6 (PTAB Mar. 20, 2020) (precedential) (“the Board takes a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review”). Anker’s request here will increase efficiency in at least two ways. First, Anker will reduce the number of distinct, parallel challenges to the ’759 patent at the PTAB because Anker is requesting joinder rather than pursuing its own standalone petition. Second, Anker is filing its copycat petition and motion to join within 30 days of the institution of the Samsung/Dell IPR—thereby simplifying the schedule between the two IPRs and reducing the likelihood of duplicative efforts across multiple forums.

Finally, not only is Anker’s request for joinder timely (filed within 30 days of the institution of the Samsung/Dell IPR), but Anker is committed to promoting efficiency in discovery and briefing by taking an “understudy role.” Thus, joining Anker’s IPR with the Samsung/Dell IPR will not unduly burden or prejudice Patent Owner or Samsung and Dell. Instead, it will accomplish the goals of 35 U.S.C. §315(c) while also achieving for a just, speedy, and inexpensive determination of related proceedings.

II. BACKGROUND AND RELATED PROCEEDINGS

1. On February 10, 2022, MyPAQ Holdings Ltd. (“MyPAQ”)—the

purported Patent Owner—filed a complaint asserting the ’759 patent against Anker in the U.S. District Court for the Western District of Texas (Case No. 6:22-cv-00150).

2. On April 23, 2021, MyPAQ filed a complaint asserting the ’759 patent against Samsung in the U.S. District Court for the Western District of Texas (Case No. 6:21-cv-00398).

3. On September 10, 2021, MyPAQ filed a complaint asserting the ’759 patent against Dell in the U.S. District Court for the Western District of Texas (Case No. 6:21-cv-00933).

4. On December 14, 2021, Samsung and Dell jointly timely filed a Petition for *Inter Partes* Review challenging claims 1-20 of the ’759 patent (“Samsung/Dell Petition”). *See* IPR2022-00312, Paper 3 (PTAB Dec. 14, 2021).

5. Anker’s present Petition for IPR challenges the same claims of the ’759 patent using the same grounds as Samsung/Dell Petition in case no. IPR2022- 00312—including citing to the same expert testimony and evidence supporting those grounds. As such, Anker’s present Petition is substantively identical as to those grounds, and presents no new issues.

III. STATEMENT OF REASONS FOR RELIEF REQUESTED

A. Legal Standard

The Board may join as a party to an instituted *inter partes* review a person who has properly filed a petition for *inter partes* review that warrants institution. 35 U.S.C.

§ 315(c). Any request for joinder must be filed “no later than one month after the institution date of any inter partes review for which joinder is requested.” 37 C.F.R. § 42.122(b). A petition for *inter partes* review is not subject to the one year statutory time bar if the petition is accompanied by a request for joinder. 35 U.S.C. § 315(b); 37 C.F.R. § 42.122(b).

“A motion for joinder should (1) set forth reasons why joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; (3) explain what impact (if any) joinder would have on the trial schedule for the existing review; and (4) address specifically how briefing and discovery may be simplified.” *Samsung Elecs., Co. v. Raytheon Co.*, IPR2016-00962, Paper 12 at 5 (PTAB Aug. 24, 2016) (citing *Kyocera Corp. v. Softview LLC*, IPR2013- 00004, Paper 15 at 4 (PTAB Apr. 24, 2013)).

For the reasons detailed below, the *Kyocera* factors here favor joinder after the Samsung/Dell IPR is instituted.

B. Anker’s Motion for Joinder is Timely

Anker’s Motion for Joinder is timely because it is being filed within 30 days of the institution of the Samsung/Dell IPR. *See* 37 C.F.R. § 42.122(b).

C. The *Kyocera* Factors Favor Joinder

i. Factor 1: Joinder is appropriate

Joinder with the Samsung/Dell IPR would be appropriate because Anker’s

Petition involves the same patent, challenges the same claims, and is based on the same grounds and same technical expert declaration testimony relied upon in Samsung/Dell Petition. Here, Anker's Petition is substantively identical to the Samsung/Dell IPR regarding the challenged claims, the prior art grounds, and the cited evidence. Only minor changes were necessary to properly identify the filing party and to update the discretionary considerations (e.g., the *Fintiv* Factors, etc.) resulting from the different circumstances of Anker's district court proceeding versus Samsung's and Dell's district court proceeding. As such, Anker's Petition does "not present issues that might complicate or delay" the existing Samsung/Dell IPR. *See Enzymotec Ltd. v. Neptune Techs & Bioresources, Inc.*, IPR2014-00556, Paper 19 at 6 (July 9, 2014) ("a policy preference for joining a party that does not present new issues").

Moreover, if joined, Anker agrees to take an "understudy" role as petitioners in other similarly joined proceedings have done. *See, e.g., Everlight Electronics Co., Ltd. et al v. Document Security Systems, Inc.*, IPR2018-01244, Paper 15 at 6-7 (September 27, 2018) (granting institution and joinder where "Petitioner agrees to assume a complete 'understudy role'"). As such, joinder would have little, if any, impact on the Samsung/Dell IPR because no new grounds would be added, the schedule need not be affected, no additional briefing or discovery would be required, and no additional burdens would be placed on Patent Owner.

Furthermore, joinder is "appropriate" here because Anker is currently involved

in litigation based on Patent Owner's allegation that Anker's products infringe the '759 patent. Anker therefore has an undeniable interest in the substantial questions of invalidity surrounding the '759 patent, and granting Anker's motion for joinder will fairly protect such interest and Anker's continued participation in the IPR process—even if Samsung and/or Dell settles with Patent Owner or otherwise ceases active participation in the Samsung/Dell IPR. As such, granting Anker's motion for joinder will facilitate a continued and fair review of the '759 patent, thereby promoting the public interest in “permitting full and free competition in the use of ideas which are in reality a part of the public domain.” *Lear, Inc. v. Adkins*, 395 U.S. 653, 670 (1969).

ii. Factor 2: Anker's Petition proposes no new grounds of unpatentability

Anker's Petition does not present any new grounds or arguments regarding unpatentability. It is substantively identical to Samsung/Dell Petition in that regard. The Board “routinely grants motions for joinder where the party seeking joinder introduces identical arguments and the same grounds raised in the existing proceeding,” and Anker should be treated no differently than other petitioners in such circumstances. *BlackBerry Corp. v. Uniloc 2017 LLC*, IPR2019-01283, Paper 10 at 8 (PTAB Nov. 5, 2019) (quoting *Samsung*, IPR2016-00962, Paper 12 at 9) (emphasis added). This factor therefore favors joinder.

iii. Factor 3: Joinder will not unduly burden or negatively impact the Samsung/Dell IPR

Joinder will not unduly burden Patent Owner. Because Anker's Petition challenges the same claims based upon the same prior art grounds and cited evidence as that of Samsung/Dell Petition, there would be no new issues for Patent Owner to address. *See Sony Corp. v. Memory Integrity, LLC*, IPR2015-01353, Paper 11 at 6 (PTAB Oct. 15, 2015) (noting the substantively identical issues and evidence between the two petitions did not "necessitate any additional briefing or discovery from Patent Owner beyond that already required in [the original IPR]"). To be clear, both IPR petitions share the same expert (Dr. Kiaei)¹ providing the same substantive testimony regarding the prior art grounds. Accordingly, joining Anker's IPR petition of the '759 patent to Samsung/Dell IPR petition will allow for simplified and efficient discovery with regard to Dr. Kiaei (e.g., a common date for deposition, etc.).

Likewise, joinder will not negatively impact the trial schedule of the Samsung/Dell IPR. If joinder of Anker is granted, Anker expressly consents to the

¹ Notably, Anker is simply refiling the declaration prepared and originally filed by Samsung/Dell in IPR2022-00312, with the exception of the introductory statement from Dr. Kiaei (§1). Dr. Kiaei's testimony related to the prior art grounds is identical, and no new issues were raised. Petitioner has separately engaged Dr. Kiaei with respect to this present IPR proceeding.

trial schedule issued in the Samsung/Dell IPR. Further, as described below, Anker agrees to take an “understudy” role in the joined proceeding, so long as Samsung/Dell remains an active party in the joined proceeding.

iv. Factor 4: Procedures to simplify briefing and discovery

In the event Anker is joined, Anker agrees to take an “understudy” role in the joined proceeding, so long as Samsung/Dell remains a party and active participant in the proceeding. *See, e.g., Apple Inc. v. INVT SPE LLC*, IPR2019-00958, Paper 9 at 6-8 (PTAB May 30, 2019) (granting motion for joinder where the movant presented a substantively identical petition and agreed to take an “understudy” role in the joined proceeding); *Intel Corp. v. Alacritech, Inc.*, IPR2018-01352, Paper 11 at 3–5 (PTAB Jan. 8, 2019) (same). To be clear, Anker only contemplates assuming the role of primary petitioner in the instituted Samsung/Dell IPR if (i) Samsung/Dell is terminated as a party to the proceeding, or (ii) Samsung/Dell ceases participating in the proceeding such that the proceeding is no longer “meaningfully adversarial,” contrary to the public interest. *See ZTE (USA), Inc., et al. v. CyWee Group Ltd.*, IPR2019-00143, Paper 50 at 7-9 (PTAB July 17, 2020) (allowing a joinder petitioner to assume the role of primary petitioner with respect to a motion to amend because the “trial no longer appears to be meaningfully adversarial” given the primary petitioner’s decision not to oppose revised amended claims).

As an understudy in the Samsung/Dell IPR, Anker agrees to the following

conditions regarding the joined proceeding, so long as Samsung/Dell remains an active party in the joined proceeding:

- All filings by Anker in the joined proceeding shall be consolidated with the filings of Samsung/Dell unless a filing solely concerns issues that do not involve Samsung/Dell²;
- Anker shall not be permitted to raise any new grounds not already instituted by the Board in the Samsung/Dell IPR, or introduce any argument or discovery not already introduced by Samsung/Dell;
- Anker shall be bound by any agreement between Patent Owner and Samsung/Dell concerning discovery and/or depositions; and
- At deposition, Anker shall not receive any direct examination, cross-examination, or redirect time beyond that permitted in this proceeding for Samsung/Dell alone under either 37 C.F.R. § 42.53 or any agreement between Patent Owner and Samsung/Dell.

See Apple, IPR2019-00958, Paper 9 at 7–8 (granting a motion for joinder where the

² Any consolidated filings jointly submitted by petitioners will not exceed the normal page limits for a single party set forth in the rules. Circumstances may require Anker to request and file separate papers with respect to Anker's individual status as petitioner in the proceeding—*e.g.*, a motion to terminate.

movant proposed the above limitations on its role as understudy); *see also Intel Corp.*, IPR2018-01352, Paper 11 at 4–5 (granting a motion for joinder with such limitations on the understudy).

Additionally, with respect to any oral hearing, Samsung/Dell will be responsible for the presentation before the Board. Anker, when in the understudy role, will not request any additional time to independently argue before the Board or attempt to submit its own demonstratives.³

Accordingly, if joinder is granted, briefing and discovery in the joined proceeding will be no more complex than if Anker had never been joined. Consolidated briefing and discovery will ensure a simplified and efficient joined proceeding. As such, this factor also favors joinder.

IV. CONCLUSION

For the reasons above, Anker respectfully requests that the Board (i) institute Anker's concurrently filed Petition for *Inter Partes* Review of the '759 patent; and (ii) grant joinder.

³ While Anker will not materially participate in calls with the Board, depositions, and any oral hearing, Anker anticipates that its counsel will attend such events. Additionally, Anker's understudy role does not foreclose communication between Anker and other petitioners in the Samsung/Dell IPR.

DATE: June 15, 2022

Respectfully Submitted,

/s/ Ping Wang

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Motion For Joinder has been served via Federal Express on June 15, 2022 upon the following:

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