

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

Cooler Master Co., Ltd.

Petitioner

v.

Asetek Danmark A/S,
Patent Owner

Patent No. 8,245,764
Title: COOLING SYSTEM FOR A COMPUTER SYSTEM

IPR Case No.: IPR2023-00668

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 THE PRECISE RELIEF REQUESTED

Cooler Master Co., Ltd. (“CMC” or “Petitioner”) respectfully submits this Motion for joinder under 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.22 and 42.122(b), concurrently with its Petition (“Instant Petition”) for *inter partes* review of U.S. Patent No. 8,245,764 (the “’764 patent”).

Joinder is appropriate because the Instant Petition is essentially a copy of the petition filed in *Shenzhen Apaltek Co., Ltd. v. Asetek Danmark A/S*, IPR2022-01317 (“the Apaltek Petition”), on which trial was instituted on February 6, 2023 (the “Apaltek IPR”). The Instant Petition includes identical grounds concerning the same claims challenged in the Apaltek Petition and therefore would create no additional burden for the Board, Apaltek, or the Patent Owner, if joined.

Petitioner stipulates that if joinder is granted, it will cooperate with Shenzhen Apaltek Co., Ltd. (“Apaltek”) in the joined proceeding, whether at hearings, at depositions, in filings, or otherwise, as outlined below. Joinder will not impact the trial schedule because the Apaltek IPR proceeding is in its early stages. Joinder would therefore lead to an efficient resolution of the validity of the ’764 patent.

This Motion for Joinder is timely under 37 C.F.R. §§ 42.22 and 42.122(b), as it is submitted within one month of February 6, 2023, the date on which the Apaltek IPR was instituted.

II. REASONS FOR THE RELIEF REQUESTED

A. Legal Standard

In determining whether to join one IPR proceeding to another, the Board considers: (1) reasons why joinder is appropriate; (2) any new grounds of unpatentability asserted in the petition; (3) what impact (if any) joinder would have on the trial schedule for the existing review; and (4) specifically how briefing and discovery may be simplified. *See Dell, Inc. v. Network-1 Security Solutions, Inc.*, IPR2013-00385, Paper 17 at 4 (PTAB July 29, 2013). Each of these factors favors joinder here.

B. Reasons Why Joinder Is Appropriate

Joinder is appropriate because it is the most efficient way to resolve the two related proceedings. The Instant Petition is intentionally identical in substance to the Apaltek Petition and does “not present new issues that might complicate or delay” the Apaltek IPR. *See Enzymotec Ltd. v. Neptune Techs & Bioresources, Inc.*, IPR2014-00556, Paper 19 (PTAB July 9, 2014). The only difference between the Instant Petition and the Apaltek Petition are the sections on Real Party-In-Interest, Related Matters, and Grounds for Standing, which have been appropriately updated.

Joinder would therefore have little, if any, impact on the Apaltek IPR because no new grounds would be added, the schedule would be unaffected, no additional briefing or discovery would be required, and no additional burdens would be placed on the Patent Owner, as detailed below. Accordingly, joinder is

appropriate because it ensures a just, speedy, and inexpensive resolution of these proceedings. *Samsung Elecs. Co., Ltd. v. Raytheon Co.*, IPR2016-00962, Paper 12 at 9 (PTAB Aug. 24, 2016) (recognizing that the Board “routinely grants motions for joinder where the party seeking joinder introduces identical arguments and the same grounds raised in the existing proceeding.”).

C. The Instant Petition Does Not Raise Any New Grounds of Unpatentability

The Instant Petition relies on the same grounds of unpatentability of claims 1-30 of the '764 patent that were instituted in the Apaltek IPR. *See* IPR2022-01317, Paper 7 (Feb. 6, 2023). As discussed above, the evidence and arguments supporting the Instant Petition are substantively identical to the evidence and arguments supporting the Apaltek IPR.

D. Joinder Will Not Affect the Schedule in the Apaltek IPR

Joinder will not affect the schedule in the Apaltek IPR, because Petitioner agrees to the deadlines set forth in the Apaltek IPR Scheduling Order. *See* IPR2022-01317, Paper 8 (Feb. 6, 2023). Since the Instant Petition does not raise any new arguments and is substantively identical to the Apaltek IPR petition, there should be no need for Patent Owner to submit a preliminary response to the Instant Petition. Joinder would allow the Board and parties to focus on the merits of the unpatentability challenges to claims 1-30 of the '764 patent in a single consolidated proceeding without duplication of effort, and in an efficient manner.

E. Joinder will Simplify Briefing Because Petitioner Has Agreed to Consolidated Filings and an Understudy Role

Petitioner agrees to take an “understudy” role as long as Apaltek remains a party to the Apaltek IPR, which will simplify briefing and discovery.¹ *See, e.g., Noven Pharm., Inc. v. Novartis AG*, IPR2014-00550, Paper 38 at 5 (PTAB April 10, 2015). In this role, Petitioner agrees to the following conditions:

(a) Petitioner will not make any substantive filings and shall be bound by the filings of Apaltek, unless a filing concerns termination and settlement, or issues solely involving Petitioner.

(b) Petitioner will not present any argument or make any presentation at oral hearing unless an issue solely involves Petitioner, or when addressing Board-approved motions that do not affect Apaltek.

(c) Petitioner will not seek to cross-examine or defend the cross-examination of any witness, unless the topic of cross-examination concerns issues solely involving Petitioner, within the time permitted by Apaltek alone and with Apaltek's agreement.

(d) Petitioner will not seek discovery from Patent Owner, unless issues arise that are unique to, and only applicable to, Petitioner.

(e) Petitioner will not rely on expert testimony beyond that submitted

¹ In the event Apaltek no longer participates in the IPR proceedings, Petitioner would take over primary responsibility for subsequent filings and discovery.

by Apaltek unless and until Apaltek is terminated as party to the proceedings, prior to any necessary depositions. Petitioner's expert, Dr. Karamanis, is the same expert used in the Apaltek IPR, and his expert declaration submitted herein is substantively identical to the declaration he submitted in the Apaltek IPR.

F. Joinder Will Not Prejudice Patent Owner

Petitioner's joining of the Apaltek IPR should not result in any prejudice to Patent Owner. No additional grounds or arguments are being introduced, no new evidence or issues are being added, and no additional discovery, briefing or oral argument should be necessary as a result of the Instant Petition and joinder. Additionally, joinder decreases the number of filings by the parties, eliminates duplication of effort, and will create case management efficiencies for the Board and Patent Owner.

G. Considerations Under §§ 314(a) and 325(d)

Petitioner respectfully requests that the Board decline to exercise its discretion to deny institution.

§314(a): On June 14, 2022, the co-pending district court litigation was stayed pending the outcome of related IPR proceedings, which now include the Apaltek IPR that Petitioner seeks to join. Cooler Master Co., Ltd. v. Asetek Danmark A/S, Case No. 5:21-cv-04627-EJD (N.D. Cal. June 14, 2022) (Doc. 42). Because the co-pending litigation is stayed, there is virtually no risk that the Board's efforts will be rendered moot by a district court decision issued before

the Apaltek IPR concludes. Further, to alleviate any concerns of duplicative efforts between the district court and the Board, Petitioner hereby stipulates that it will not pursue, in district court, invalidity based on any instituted IPR ground if the joinder is granted.

§325(d): This is the only petition filed by Petitioner regarding this patent. Petitioner had no involvement in prior petitions challenging this patent. Where a petitioner files a “copycat” petition in conjunction with a timely motion for joinder and agrees to assume a “passive understudy role,” the *General Plastic* factors are “effectively neutraliz[ed].” *Apple Inc. v. Uniloc 2017 LLC*, IPR2018-00580, Paper 13 at 10-11 (Aug. 21, 2018).

III. CONCLUSION

For the reasons above, Petitioner respectfully request that its Petition for *Inter Partes* Review of the '764 patent be instituted and that Petitioner be joined to the Apaltek IPR, IPR2022-01317.

Dated: March 6, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the **PETITIONER'S MOTION FOR JOINDER UNDER 35 U.S.C. § 315(c), 37 C.F.R. § 42.22 AND § 42.122(b)**, was served on counsel of record for the '764 patent by Federal Express and electronic mail. Both parties consented to electronic service prior to the filing of this Petition.

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