

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC., MICROSOFT CORPORATION, AMAZON.COM,
INC., AMAZON WEB SERVICES, INC., AND AMAZON.COM SERVICES
LLC,
Petitioners

v.

LS CLOUD STORAGE TECHNOLOGIES, LLC
Patent Owner

Case No. IPR2023-00733
U.S. Patent No. 10,154,092

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

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. BACKGROUND AND RELATED PROCEEDINGS	2
A. Related District Court Litigation.....	2
B. Related IPR Proceedings	3
III. ARGUMENTS	3
A. Petitioner’s Motion for Joinder Is Timely.....	4
B. Joinder Is Warranted under <i>Kyocera</i>	4
1. Factor 1: Joinder is appropriate.....	4
2. Factor 2: Petitioner’s petition proposes no new grounds for unpatentability.....	6
3. Factor 3: Joinder will not unduly burden or negatively impact the Google IPR trial schedule	6
4. Factor 4: Procedures to simplify briefing and discovery.....	8
IV. CONCLUSION.....	10

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Apple Inc. v. INVT SPE LLC</i> , IPR2019-00958, Paper 9 (PTAB May 30, 2019)	7, 9
<i>AT&T Servs., Inc. v. Convergent Media Solutions, LLC</i> , IPR2017-01235, Paper 11 (PTAB May 9, 2017) (Lee, J.)	9
<i>BlackBerry Corp. v. Uniloc 2017 LLC</i> , IPR2019-01283, Paper 10 (PTAB Nov. 5, 2019).....	6
<i>Celltrion, Inc. v. Genentech, Inc.</i> , IPR2018-01019, Paper 11 (Oct. 30, 2018)	7
<i>Ericsson Inc. v. Uniloc 2017 LLC</i> , IPR2020-00376, Paper 16.....	9
<i>Everlight Electronics Co., Ltd.</i> , IPR2018-01260, Paper 12 (PTAB Nov. 14, 2018).....	7
<i>Google LLC v. LS Cloud Storage Technologies, LLC</i> , IPR2023-00120	<i>passim</i>
<i>Intel Corp. v. Alacritech, Inc.</i> , IPR2018-01352, Paper 11 (PTAB Jan. 8, 2019)	7, 9
<i>Kyocera Corp. v. Softview LLC</i> , IPR2013-00004, Paper 15 (PTAB Apr. 24, 2013)	4
<i>Lear, Inc. v. Adkins</i> , 395 U.S. 653 (1969).....	5
<i>Pfizer Inc. v. Sanofi-Aventis Deutschland GmbH</i> , IPR2019-00980, Paper 12 (PTAB Aug. 15, 2019).....	7
<i>Samsung Elecs., Co. v. Raytheon Co.</i> , IPR2016-00962, Paper 12 (PTAB Aug. 24, 2016).....	4
<i>Sony Corp. v. Memory Integrity, LLC</i> , IPR2015-01353, Paper 11 (PTAB Oct. 15, 2015).....	6, 9

Statutes

35 U.S.C. § 314(a)	5
35 U.S.C. § 315(b)	3, 4
35 U.S.C. § 315(c)	1, 3

Other Authorities

37 C.F.R. § 42.122(b)	1, 3, 4
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I. INTRODUCTION

Cisco Systems, Inc. (“Cisco”), Microsoft Corporation (“Microsoft”), Amazon.com, Inc., Amazon Web Services, Inc., and Amazon.com Services LLC (“Amazon”) (collectively, “Petitioner”) respectfully submit this Motion for Joinder (“Motion”) together with a Petition (“Copycat Petition”) for *Inter Partes* Review (IPR) of U.S. Patent No. 10,154,092 (“’092 Patent”). The ’092 Patent is the subject of another proceeding before the Patent Office, *Google LLC v. LS Cloud Storage Technologies, LLC*, IPR2023-00120 (“Google IPR”). Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b), Petitioner respectfully requests institution of *inter partes* review of the same claims of the ’092 Patent challenged in the Google IPR based on the same grounds presented in the Google IPR and further requests joinder with the Google IPR.

Petitioner’s request for joinder is timely because it is made before an institution decision has been issued by the Board in the Google IPR. Further, Petitioner’s joinder will not unduly burden or prejudice the parties to the Google IPR and will efficiently resolve the patentability of the ’092 Patent in a single IPR proceeding. The Copycat Petition is substantively identical to the Google IPR petition (“Google Petition”). The Copycat Petition seeks review of the same patent claims challenged in the Google IPR, advances the same grounds for unpatentability advanced in the Google IPR, and relies on the same evidence (including expert

declarations) as the Google IPR. Additionally, Petitioner proposes streamlining the proceedings by taking an “understudy” role (unless Google LLC is terminated from the proceedings). Finally, petitioner in the Google IPR does not oppose Petitioner’s joinder. Accordingly, Petitioner respectfully requests that the Board institute the Copycat Petition and join this IPR with the Google IPR.

II. BACKGROUND AND RELATED PROCEEDINGS

A. Related District Court Litigation

The ’092 Patent is the subject of the following litigation:

- *LS Cloud Storage Technologies, LLC v. Cisco Systems, Inc.*, 6:22-cv-00319 (W.D. Tex. 2022)
 - Dismissed and refiled as *LS Cloud Storage Technologies, LLC v. Cisco Systems, Inc.*, 6:22-cv-00845 (W.D. Tex. 2022) (joint motion to transfer to the Austin Division granted November 22, 2022)
- *LS Cloud Storage Technologies, LLC v. Google LLC*, 6:22-cv-00318 (W.D. Tex. 2022)
 - Transferred to the Austin Division as *LS Cloud Storage Technologies, LLC v. Google LLC*, 1:22-cv-00853 (W.D. Tex. 2022) by agreement of the parties on August 15, 2022
- *LS Cloud Storage Technologies, LLC v. Amazon.com, Inc.*, 6:22-cv-00316 (W.D. Tex. 2022)

- Transferred to the Austin Division as *LS Cloud Storage Technologies, LLC v. Amazon.com, Inc.*, 1:22-cv-01167 (W.D. Tex. 2022) by agreement of the parties on October 31, 2022
- *LS Cloud Storage Technologies, LLC v. Microsoft Corporation*, 6:22-cv-00321 (W.D. Tex. 2022)
 - Transferred to the Austin Division as *LS Cloud Storage Technologies, LLC v. Microsoft Corporation*, 1:22-cv-00974 (W.D. Tex. 2022)

B. Related IPR Proceedings

The '092 Patent is the subject of the following IPR Proceeding:

- *Google LLC v. LS Cloud Storage Technologies, LLC*, IPR2023-00120 (U.S. Patent No. 10,154,092)

III. ARGUMENTS

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)).

A. Petitioner’s Motion for Joinder Is Timely

Petitioner’s Motion is timely because it is being filed before an institution decision has been issued by the Board in the Google IPR. As such, Petitioner’s Motion meets the requirement that it 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). Petitioner’s Copycat Petition is not subject to the one-year statutory time bar because it is accompanied by a request for joinder. *See* 35 U.S.C. § 315(b); 37 C.F.R. § 42.122(b).

B. Joinder Is Warranted under *Kyocera*

1. Factor 1: Joinder is appropriate

Joinder with the Google IPR is appropriate because the Copycat Petition involves the same patent, challenges the same claims, and is based on the same grounds and supported by the same technical expert declaration and evidence as the Google Petition. Additionally, as noted below, the Copycat Petition raises *only* the

grounds from the Google IPR. In short, the Copycat Petition is substantively identical to the Google Petition. The only minor changes include changes necessary for proper identification of the parties filing the petition, the discussion of why discretionary denial under 35 U.S.C. § 314(a) is not warranted as it relates to Cisco, Microsoft, and Amazon, and relevant corresponding documents. On the merits, the Copycat Petition should therefore be instituted for at least the same reasons that the Board should institute the Google IPR. Further, good cause exists to allow joinder, given that the Copycat Petition is substantively identical to the Google Petition, and joinder would allow the Board to effectively resolve the identical challenges raised by both parties in a single proceeding.

Additionally, Petitioner is currently involved in litigation based on Patent Owner's allegation that Cisco's, Microsoft's, and Amazon's products infringe the '092 Patent. *See above*, Section II.A. Petitioner therefore has a particular interest in the substantial questions of invalidity surrounding the '092 Patent. Joinder is also appropriate for the additional reason that the invalidity grounds as to the challenged claims can be resolved through Petitioner's continued participation in the IPR process, even if the original petitioner in IPR2023-00120 were to reach a settlement with Patent Owner, or otherwise cease participation in that proceeding. 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),

favors allowing joinder in this case, as joinder would allow Petitioner to continue participating in the IPR process if Google ceases participation.

2. Factor 2: Petitioner’s petition proposes no new grounds for unpatentability

The Copycat Petition does not present any new grounds or arguments regarding unpatentability. It is substantively identical to the Google Petition. The Board “routinely grants motions for joinder where the party seeking joinder introduces identical arguments and the same grounds raised in the existing proceeding.” *BlackBerry Corp. v. Uniloc 2017 LLC*, IPR2019-01283, Paper 10 at 8 (PTAB Nov. 5, 2019) (quoting *Samsung*, IPR2016-00962, Paper 12 at 9). This factor therefore favors joinder.

3. Factor 3: Joinder will not unduly burden or negatively impact the Google IPR trial schedule

Joinder will not unduly burden Patent Owner. Because the Copycat Petition presents the same grounds and arguments as the Google Petition, there are 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) (granting motion for joinder and instituting IPR where “joinder should not necessitate any additional briefing or discovery from Patent Owner beyond that already required in [the original IPR]”). Indeed, the Patent Owner’s Preliminary Response in the Google IPR would be

sufficient to address the Copycat Petition because the issues presented are substantively identical.

Likewise, joinder will not negatively impact any trial schedule for the Google IPR. As described below, Petitioner agrees to take an “understudy” role in the joined proceeding, so long as Google remains an active part in the joined 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).

Finally, the Copycat Petition relies on the same technical expert declaration as the Google Petition. Ex. 1004 (Decl. of Dr. Paul Franzon, Ph.D.). Therefore, joinder will not increase the complexity of the proceeding. Indeed, the Board typically grants joinder even where a petitioner presents a different witness with a substantially similar declaration. *See, e.g., Pfizer Inc. v. Sanofi-Aventis Deutschland GmbH*, IPR2019-00980, Paper 12 at 3–4, 6–7 (PTAB Aug. 15, 2019); *Everlight Electronics Co., Ltd.*, IPR2018-01260, Paper 12 at 4, 6–7 (PTAB Nov. 14, 2018); *Celltrion, Inc. v. Genentech, Inc.*, IPR2018-01019, Paper 11 (Oct. 30, 2018).

4. Factor 4: Procedures to simplify briefing and discovery

Petitioner agrees to take an “understudy” role in the joined proceeding, absent termination of the original petitioner as a party. Specifically, Petitioner agrees to the following conditions regarding the joined proceeding, so long as Google remains an active party in the joined proceeding:

1. Petitioner will not be making any substantive filings, and Petitioner agrees that Google alone will be responsible for all substantive petitioner filings in the joined proceeding;
2. Petitioner agrees to be bound by all filings by Google in the joined proceeding, except for filings regarding termination and settlement;
3. Petitioner must obtain prior Board authorization to file any paper or to take any action on its own in the joined proceeding;
4. Petitioner shall not be permitted to raise any new grounds not already instituted by the Board for the Google IPR, or introduce any argument or discovery not already introduced by Google;
5. Petitioner shall be bound by any agreement between Patent Owner and Google concerning discovery and depositions;
6. Petitioner will not cross-examine or defend any witness at deposition;
7. Google will be responsible for any oral hearing presentation, including the preparation of demonstrative exhibits.

Only if Google ceases participation in the proceeding:

8. Petitioner would assume a primary role, meaning it would take over the role previously filled by Google.

See Ericsson Inc. v. Uniloc 2017 LLC, IPR2020-00376, Paper 16 at 10 (granting a motion for joinder with the same conditions).

The eight conditions listed above are intended to capture Petitioner’s proposed “understudy” role. This list of conditions was provided to Google prior to filing, and Google stated it does not oppose Petitioner’s joinder under the conditions specified above. The conditions are also consistent with the Board’s stated conditions of joinder in other cases. *Id.*; *see also AT&T Servs., Inc. v. Convergent Media Solutions, LLC*, IPR2017-01235, Paper 11 at 36–37 (PTAB May 9, 2017) (Lee, J.) (granting joinder with similar limitations on an understudy).

The Board has consistently found that the acceptance of an “understudy” role removes any undue complications or delay that might allegedly result from joinder. *See, e.g., Apple*, IPR2019-00958, Paper 9 at 6–8 (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.*, IPR2018-01352, Paper 11 at 3–5 (same); *Sony Corp.*, IPR2015-01353, Paper 11 at 6–7. As such, this factor also favors joinder.

IV. CONCLUSION

For the reasons above, Petitioner respectfully requests that the Board grant joinder with the Google IPR.

Dated: March 20, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby confirms that the foregoing Petitioner's Motion for Joinder Under 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b) was caused to be served on March 20, 2023 via overnight courier upon the following counsel of record for Patent Owner in the related district court litigation:

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