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Paper No. 12
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC., LG ELECTRONICS INC., and
SONY ELECTRONICS INC.,
Petitioner,

v.

JAWBONE INNOVATIONS, LLC,
Patent Owner.

IPR2023-01127
IPR2023-01154
IPR2023-01166
Patent 8,019,091 B2

Before GEORGIANNA W. BRADEN, NORMAN H. BEAMER, and JASON M. REPKO, *Administrative Patent Judges.*

REPKO, *Administrative Patent Judge*.

ORDER
Consolidation of Proceedings
35 U.S.C. § 315(d); 37 C.F.R. § 42.122(a)

In separate decisions, the Board instituted *inter partes* review in the captioned proceedings. *See* IPR2023-01127, Paper 10; IPR2023-01154, Paper 11; IPR2023-01166, Paper 11. Meta Platforms, Inc. ("Meta"), Sony Electronics, Inc. ("Sony"), and LG Electronics, Inc. ("LG") are the Petitioners.

The Petitioners challenge the same patent and rely on the same prior art and arguments. In fact, each petition was accompanied by a motion for joinder arguing that joinder was proper because the asserted challenges to patentability were substantively identical to those presented in IPR2023-00253, the proceeding sought to be joined. *See* IPR2023-01127, Paper 2 at 5; IPR2023-01154, Paper 3 at 5; IPR2023-01166, Paper 3 at 5.[1]

In the scheduling orders for all three proceedings, the Board directed the parties "to contact the Board within a month of this Order to discuss consolidation and coordination among the petitioners." *See, e.g.*, IPR2023-00127, Paper, 2. All three proceedings follow the same schedule.

On January 24, 2024, the Board held a conference call with the Petitioners and Patent Owner to discuss consolidation. During that call, Petitioners represented that the petitions in IPR2023-01127, IPR2023-01154, and IPR2023-01166 are substantively the same. The Petitioners agreed to submit a Consolidation Plan acceptable to all parties.

In an email on February 2, 2024, the parties jointly proposed a Consolidation Plan. IPR2023-01127, Ex. 3001; IPR2023-01154, Ex. 3001;

[1] The Board dismissed each motion for joinder as moot because IPR2023-00253 terminated. *See* IPR2023-01127, Paper 10; IPR2023-01154, Paper 11; IPR2023-01166, Paper 11.

IPR2023-01166, Ex. 3002. According to the Consolidation Plan,

> (1) "[T]he Sony IPR proceeding (IPR2023-01166) and LG IPR proceeding (IPR2023-01154) will be consolidated into the Meta IPR proceeding (IPR2023-01127),"
>
> (2) "Counsel for Meta, Sony, and LG will form a joint petitioners' group and will submit joint filings,"
>
> (3) Meta will lead the joint petitioners' group, and
>
> (4) Sony and LG will take "understudy" roles.

Id.

We find the joint Consolidation Plan submitted by the parties reasonable and fair. Thus, to secure a just, speedy, and inexpensive resolution to all three proceedings, and to administer the proceedings efficiently, we exercise our authority to consolidate IPR2023-01154 and IPR2023-01166 with IPR2023-01127. *See* 37 C.F.R. §§ 42.1(b), 42.122(a).

The Consolidation Plan does not expressly define the scope of the understudy role. Petitioner Sony, though, agreed to an understudy role defined in its Motion for Joinder. IPR2023-01166, Paper 3 at 6. Likewise, Petitioner LG agreed to a similar understudy role in its motion. *See* IPR2023-01154, Paper 3 at 6.

We define the understudy role consistent with the agreed upon roles from the motions for joinder. That is, for the Consolidated Proceeding, we define the understudy role such that (1) Meta alone is responsible for all petitioner filings in the consolidated proceeding until such time that it is no longer an entity in the proceeding, (2) the understudy petitioners are bound by all filings by Meta in the Consolidated Proceeding, except for termination

or settlement filings and filings in which the understudy petitioner receives permission to file an independent paper, (3) the understudy petitioners shall not be permitted to raise any new grounds not already instituted by the Board in the Consolidated Proceeding and may not introduce any argument or discovery not already not already introduced by Meta, (4) the understudy petitioners shall be bound by any agreement between Patent Owner and Meta concerning discovery or depositions, and (5) the understudy petitioners at deposition shall not receive any direct, cross-examination, or redirect time beyond that permitted for Meta alone under either 37 C.F.R. § 42.53 or any agreement between Patent Owner and Meta. The understudy petitioners must obtain prior Board authorization to file any paper or to take any action on their own in the Consolidated Proceeding, as long as Meta remains as a non-terminated petitioner.

LG and Sony must file their respective petitions (IPR2023-01154, Paper 2; IPR2023-01166, Paper 1) in the Consolidated Proceeding within ten (10) business days of this Order's entry. In the conference call and in their Motions for Joinder, the Petitioners represented that their petitions are substantively identical. *See* IPR2023-01127, Paper 2 at 5; IPR2023-01154, Paper 3 at 5; IPR2023-01166, Paper 3 at 5. Even so, for clarity of the record, the parties must at least cite to the Petition in IPR2023-01127 when discussing the asserted challenges to patentability in their briefing. Additional citations to the other petitions are permitted if helpful or necessary.

ORDER

It is

ORDERED that IPR2023-01154 and IPR2023-01166 are consolidated with IPR2023-01127;

FURTHER ORDERED that all future filings in the Consolidated Proceeding are to be made only in IPR2023-01127;

FURTHER ORDERED that Petitioners from the three proceedings will collectively be a joint Petitioner's group led by counsel for Meta;

FURTHER ORDERED that Sony and LG will take understudy roles, as defined in this Order;

FURTHER ORDERED that the Consolidated Proceeding will be on all asserted challenges to patentability presented in IPR2023-01127, IPR2023-01154, and IPR2023-01166;

FURTHER ORDERED that, in future briefing, citations to the asserted challenges to patentability must be to the petition in IPR2023-01127;

FURTHER ORDERED that the case caption in IPR2023-01127 is changed to reflect its consolidation with IPR2023-01154 and IPR2023-01166 (sample caption appended to this Order);

FURTHER ORDERED that, within ten (10) business days from this Order's entry, LG must file, in IPR2024-01127, (1) its Petition from IPR2023-01154 and (2) a new Power of Attorney for the Consolidated Proceeding; and

FURTHER ORDERED that, within ten (10) business days from this

Order's entry, Sony must file, in IPR2024-01127, (1) its Petition from IPR2023-01166 and (2) a new Power of Attorney for the Consolidated Proceeding.

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