

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION,
Petitioner

v.

AX Wireless
Patent Owner.

IPR2023-01140

U.S. Patent 10,917,272

**PETITIONER'S EXPLANATION FOR AND RANKING OF TWO
PETITIONS CHALLENGING U.S. PATENT NO. 10,917,272**

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Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

I. Introduction

Pursuant to the November 2019 Consolidated Trial Practice Guide (“Guide”), Petitioner, Intel Corporation (“Intel”) provides this explanation of multiple petitions challenging U.S. Patent No. 10,917,272 (the “’272 patent”). Intel presents two petitions, each of which applies the same grounds based on three prior art references U.S. Patent Publication 2006/0182017 to Hansen, et al; “WWiSE Proposal: High throughput extension to the 802.11 Standard” to Kose, et al; and U.S. Patent Publication 2005/0243774 to Choi, et al. The petitions differ in respect to the particular claims challenged in each. The multiple petitions are justified by the number of claims Patent Owner has asserted in the related district court litigation (14)¹, the length of the independent claims, the depth of analysis presented in the petitions, and the petition word limit.

II. Explanation of Material Differences and Reasons Why More Than One Petition Should Be Instituted

Each of the petitions is materially distinguishable from the other by virtue of challenging a unique claim set. The petition in IPR2023-01139 challenges claims 1-3, 5, 7-9. The petition in IPR2023-01140 challenges claims 11-13, 15, 17-19.

¹ Petitioner has asserted claims 1-3, 5, 7-9, 11-13, 15 and 17-19.

There are no overlapping claims in these petitions. Therefore, the petitions present materially different challenges, each to a unique subset of '272 patent claims. Patent Owner's current list of asserted claims is not final, as there remains a possibility that Patent Owner will attempt to assert additional claims at some future date. Moreover, even the currently asserted claims would be difficult if not impossible to challenge in a single petition without significantly reducing the amount of analysis provided, prejudicing Intel's ability to explain the basis of invalidity in view of the complex subject matter at issue.

In addition, both petitions provide explanations why the Board should not exercise its discretion to deny institution under *Fintiv* or *General Plastic*, limiting the space available to address the merits of invalidity.

Accordingly, two petitions are necessary in order to address each of the challenged claims in sufficient detail. Guide, 59 ("[T]here may be circumstances in which more than one petition may be necessary, including, for example, when the patent owner has asserted a large number of claims in litigation."). The second petition has been filed due to the word count limit for petitions, the number of asserted claims, and the need to address each challenged claim in sufficient detail. The second petition is not submitted to present additional grounds of challenge or invalidity theories for the same claims addressed in first petition.

Beyond the Guide, additional factors support institution of Intel’s multiple petitions. Because the petitions are filed simultaneously, they will be able to track the same schedule post-institution, maximizing the efficiency of depositions, briefing, and oral argument. In addition, Intel uses the same expert witness to support both petitions, meaning a single deposition should be sufficient.

III. Ordering of Petitions

For the reasons discussed above, the Board should grant institution for both petitions. Under the circumstances, a ranking of petitions is not appropriate given that they challenge unique claim sets with no overlap. However, in view of the guidance in the consolidated trial practice guide (Guide, 60), Intel requests that the Board consider the petitions in the following order.

Order	IPR Case No.	Challenged Claims
1	IPR2023-01139	1-3, 5, 7-9
2	IPR2023-01140	11-13, 15, 17-19

IV. Conclusion

Intel requests that the Board grant institution for both petitions.

Respectfully submitted,

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Date: June 30, 2023

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true copies of the ETITIONER'S
EXPLANATION FOR AND RANKING OF TWO PETITIONS CHALLENGING
U.S. PATENT NO. 10,917,272 was served via overnight delivery on the Patent
Owner at the correspondence address of record as listed in USPTO records:

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and via email to the attorneys of record for Plaintiff in the concurrent *AX Wireless LLC, v. Dell Inc., and Dell Technologies Inc., 2-22-cv-00277 (EDTX)*, *AX Wireless LLC, v. HP Inc., 2-22-cv-00279 (EDTX)*, and *AX Wireless LLC, v. Lenovo Group Ltd., 2-22-cv-00280 (EDTX)* litigations:

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