

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICRON TECHNOLOGY, INC., MICRON SEMICONDUCTOR
PRODUCTS, INC., and MICRON TECHNOLOGY TEXAS LLC,
Petitioner,

v.

NETLIST, INC.,
Patent Owner.

IPR2023-01142
Patent 9,858,215 B1

Before GEORGIANNA W. BRADEN, JON M. JURGOVAN, and
DANIEL J. GALLIGAN, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314
Granting Motion for Joinder
35 U.S.C. § 315(c); 37 C.F.R. § 42.122

I. DISCUSSION

The Board instituted *inter partes* review of U.S. Patent 9,858,215 B1 (“’215 patent”) in IPR2023-00455 (“455 IPR”) based on a petition filed by Samsung Electronics Co., Ltd. (“Samsung”). 455 IPR, Papers 1, 11. In this proceeding, Micron Technology, Inc., Micron Semiconductor Products, Inc., and Micron Technology Texas LLC (collectively “Petitioner”) concurrently filed a Petition (Paper 2) and a Motion for Joinder (Paper 1, “Motion”) seeking to be joined as a petitioner to the 455 IPR.¹ Petitioner represents that Samsung, the petitioner in the 455 IPR, does not oppose joinder. Motion 2. Patent Owner did not file an opposition to the Motion.

The statute governing *inter partes* review joinder states the following:

JOINDER.—If the Director institutes an inter partes review, the Director, in his or her discretion, may join as a party to that inter partes review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an inter parties review under section 314.

35 U.S.C. § 315(c).

The time for filing a preliminary response to the Petition has expired, and Patent Owner did not file one. *See* 37 C.F.R. 42.107(b) (“The preliminary response must be filed no later than three months after the date of a notice indicating that the request to institute an *inter partes* review has

¹ Although Petitioner requests that we “join this IPR with the [455] IPR” (Motion 2), the joinder statute does not permit this. *See Facebook, Inc. v. Windy City Innovations, LLC*, 973 F.3d 1321, 1335 (Fed. Cir. 2020) (“[W]e hold that the clear and unambiguous meaning of § 315(c) does not authorize joinder of two proceedings . . .”). Thus, we treat Petitioner’s Motion for Joinder as a request to be joined as a petitioner to the 455 IPR, and, for the reasons discussed herein, we grant that request.

been granted a filing date.”); Paper 4 (filing date notice entered on August 9, 2023).

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless the information presented in the Petition and the Preliminary Response shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

Petitioner represents that the Petition “is substantively identical to” the petition in the 455 IPR. Motion 1. Petitioner presents the following grounds in this Petition, which are identical to the instituted grounds in the 455 IPR:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–29	103(a)	Perego, ² JESD79-2 ³
1–29	103(a)	Perego, JESD79-2, Ellsberry ⁴
1–29	103(a)	Perego, JESD79-2, Halbert ⁵
1–29	103(a)	Perego, JESD79-2, Matsui ⁶

Petition 5; *see* 455 IPR, Paper 11 at 4, 34 (identifying same grounds and instituting *inter partes* review). The patentability challenges in the 455 IPR met the “reasonable likelihood” standard of § 314(a). 455 IPR, Paper 11 at 33–34.

² US 7,363,422 B2, issued Apr. 22, 2008 (Ex. 1071).

³ Joint Electron Devices Engineering Council (JEDEC) DDR2 SDRAM Specification (JESD79-2), September 2003 (Ex. 1064).

⁴ US 2006/0277355 A1, published Dec. 7, 2006 (Ex. 1073).

⁵ US 7,024,518 B2, issued Apr. 4, 2006 (Ex. 1078).

⁶ US 2003/0039151 A1, published Feb. 27, 2003 (Ex. 1082).

We determine that Petitioner has demonstrated a reasonable likelihood of prevailing with respect to at least one challenged claim of the '215 patent for the reasons given in the institution decision in the 455 IPR and that the Petition warrants institution. *See* 455 IPR, Paper 11 at 9–33.

As discussed above, Petitioner's Motion is unopposed by Samsung and Patent Owner. Petitioner argues that, if joinder is granted, it will take an "understudy" role and would only assume a primary role if Samsung ceases participation in the proceeding. Motion 6–8. In the "understudy" role, Petitioner represents, among other things, that it "will not be making any substantive filings," that it "agrees to be bound by all filings by Samsung . . . except for filings regarding termination and settlement," and that it "will not cross-examine or defend any witness at deposition." Motion 7. We have reviewed the Motion, and we determine that it is appropriate under these circumstances to join Petitioner as a party to the 455 IPR.

II. ORDER

Accordingly, it is

ORDERED that, pursuant to 35 U.S.C. § 314(a) and 37 C.F.R. § 42.4, an *inter partes* review is hereby instituted on the challenges raised in the Petition;

FURTHER ORDERED that Petitioner's Motion for Joinder with IPR2023-00455 is *granted*, and Petitioner is hereby joined as a petitioner to IPR2023-00455;

FURTHER ORDERED that Petitioner's role in IPR2023-00455 shall be limited as stated by Petitioner in the Motion for Joinder (Paper 1 at 6–8) unless and until Samsung is terminated from that proceeding;

FURTHER ORDERED that the case caption in IPR2023-00455 shall be changed to reflect joinder of Petitioner in accordance with the attached example;

FURTHER ORDERED that a copy of this Decision be entered into the record of IPR2023-00455; and

FURTHER ORDERED that all further filings shall be made in IPR2023-00455.

PETITIONER:

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⁷ Micron Technology, Inc., Micron Semiconductor Products, Inc., and Micron Technology Texas LLC filed a motion for joinder and a petition in IPR2023-01142 and have been joined as petitioners to this proceeding.