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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

JAWBONE INNOVATIONS, LLC,
Patent Owner.

IPR2023-01128
IPR2023-01177
IPR2023-01155
Patent 8,326,611 B2

Before GEORGIANNA W. BRADEN, NORMAN H. BEAMER, and SHEILA F. McSHANE, *Administrative Patent Judges.*

McSHANE, *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* IPR2023-01128, Paper 13; IPR2023-01177, Paper 11; IPR2023-01155, Paper 10. 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 IPR2023-00286, the proceeding sought to be joined. *See* IPR2023-1128, Paper 2 at 1; IPR2023-01177, Paper 3 at 1; IPR2023-01155, Paper 3 at 1.[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.*, IPR2023-01128, Paper 14 at 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 IPR2023-01128, IPR2023-01177, and IPR2023-01155 are substantively the same, except that claims 3 and 4 are challenged in IPR2023-01177 and IPR2023-01155, but not in IPR2023-01128. The Petitioners agreed to submit a Consolidation Plan acceptable to all parties.

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[1] The Board dismissed each motion for joinder as moot because IPR2023-00286 was terminated. *See* IPR2023-01128, Paper 13; IPR2023-01177, Paper 11; IPR2023-01155, Paper 10.

In an email on February 2, 2024, the parties jointly proposed a Consolidation Plan. IPR2023-01128, Ex. 3001 (email from the parties). According to the Consolidation Plan,

(1) "[T]he Sony IPR proceeding (IPR2023-01177) and LG IPR proceeding (IPR2023-01155) will be consolidated into the Meta IPR proceeding (IPR2023-01128),"

(2) "With respect to the invalidity challenges asserted for dependent claims 3 and 4 that are present in the Sony and LG IPR proceedings but not present in the Meta IPR proceeding, Meta will be prepared to address the challenges to those claims,"

(3) "Counsel for Meta, Sony, and LG will form a joint petitioners' group and will submit joint filings,"

(4) Meta will lead the joint petitioners' group, and

(5) 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 IPR2023-01128 and IPR2023-01177 with IPR2023-01155. *See* 37 C.F.R. §§ 42.1(b), 42.122(a).

The Consolidation Plan does not expressly define the scope of the understudy role. *Id.* Petitioner Sony, though, agreed to an understudy role defined in its Motion for Joinder. IPR2023-01177, Paper 3 at 6. Likewise, Petitioner LG agreed to a similar understudy role in its motion. *See* IPR2023-01155, 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, and (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 and/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 (IPR2023-01155, Paper 2; IPR2023-01177, Paper 1) in the Consolidated Proceeding within ten (10) business days of the entry of this Order. In the conference call and in their Motions for Joinder, Petitioners represented that their petitions are substantively identical, except for the invalidity challenges asserted for dependent claims 3 and 4 that are present in the Sony and LG IPR

proceedings, but not present in the Meta IPR proceeding. *See* IPR2023-01128, Paper 1; IPR2023-01177, Paper 1; IPR2023-01155, Paper 2. Even so, for clarity of the record, the parties must at least cite to the Petition in IPR2023-01128 when discussing the asserted challenges to patentability in their briefing. Additional citations to the other petitions are permitted if helpful or necessary, such as when discussing the invalidity challenges asserted for dependent claims 3 and 4 that are present in the Sony and LG IPR proceedings, but not present in the Meta IPR proceeding.

ORDER

It is

ORDERED that, IPR2023-01177 and IPR2023-01155 are consolidated with IPR2023-01128;

FURTHER ORDERED that all future filings in the Consolidated Proceeding are to be made only in IPR2023-01128;

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 IPR2023-01128, IPR2023-01177, and IPR2023-01155;

FURTHER ORDERED that, in future briefing, citations to the asserted challenges to patentability must be to the petition in IPR2023-01128;

FURTHER ORDERED that the case caption in IPR2023-01128 is changed to reflect its consolidation with IPR2023-01177 and IPR2023-01155 (sample caption appended to this Order);

FURTHER ORDERED that, within ten (10) business days from the entry of this Order, LG must file, in IPR2024-01128, (1) its Petition from IPR2023-01155 and (2) a new Power of Attorney for the Consolidated Proceeding; and

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

entry of this Order, Sony must file, in IPR2024-01128, (1) its Petition from IPR2023-01177 and (2) a new Power of Attorney for the Consolidated Proceeding.

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