Filed on behalf of:

AMAZON WEB SERVICES, INC.
AND AMAZON.COM SERVICES LLC,

By:

J. DAVID HADDEN, Reg. No. 40,629
SAINA SHAMILOV, Reg. No. 48,266
DARGAYE CHURNET, Reg. No. 71,288
FENWICK & WEST LLP
801 California Street
Mountain View, CA 94041
Telephone: 650.988.8500
Facsimile: 650.938.5200

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON WEB SERVICES, INC.
AND AMAZON.COM SERVICES LLC,
Petitioners,

v.

ZENTIAN LIMITED
Patent Owner.

Case No. IPR2023-01197
Patent No. 10,971,140

PETITIONERS' MOTION FOR JOINDER UNDER 35 U.S.C. § 315(c), 37 C.F.R. § 42.22 AND § 42.122(b)

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I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Amazon Web Services, Inc. and Amazon.com Services LLC (collectively, "Petitioners") respectfully submit this Motion for Joinder under 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.22 and 42.122(b), concurrently with their Petition ("Instant Petition") for *inter partes* review of U.S. Patent No. 10,971,140 (the "'140 Patent").

Joinder is appropriate because the Instant Petition is substantively identical to the petition filed in *Apple Inc. v. Zentian Limited*, IPR2023-00037 ("the Apple Petition"), on which trial was instituted on June 12, 2023 (the "Apple IPR"). The Instant Petition includes identical grounds concerning the same claims challenged in the Apple Petition and therefore would create no additional burden for the Board, Apple, or the Patent Owner, if joined.

Petitioners stipulate that if joinder is granted, they will assume an "understudy" role to Apple and will cooperate with Apple in the joined proceeding, whether at hearings, at depositions, in filings, or otherwise, as outlined below. Joinder will not impact the trial schedule because the Apple IPR proceeding is in its early stages. Joinder would therefore lead to an efficient resolution of the validity of the '140 Patent.

This Motion for Joinder is timely under 37 C.F.R. §§ 42.22 and 42.122(b), as it is submitted within one month of June 12, 2023, the date on which the Apple IPR was instituted.

II. REASONS FOR THE RELIEF REQUESTED

A. Legal Standard

In determining whether to join one IPR proceeding to another, the Board considers: (1) reasons why joinder is appropriate; (2) any new grounds of unpatentability asserted in the petition; (3) what impact (if any) joinder would have on the trial schedule for the existing review; and (4) specifically how briefing and discovery may be simplified. *See Dell, Inc. v. Network-1 Security Solutions, Inc.*, IPR2013-00385, Paper 17 at 3 (PTAB July 29, 2013). Each of these factors favors joinder here.

B. Reasons Why Joinder Is Appropriate

Joinder is appropriate because it is the most efficient way to resolve the two related proceedings. The Instant Petition is intentionally identical in substance to the Apple Petition and does "not present issues that might complicate or delay" the Apple IPR. *See Enzymotec Ltd. v. Neptune Techs & Bioresources, Inc.*, IPR2014-00556, Paper 19 (PTAB July 9, 2014). The only difference between the Instant Petition and the Apple Petition are the sections on Real Party-In-Interest, Related Matters, Counsel, Grounds for Standing, Considerations Under §§ 314(a) and 325(d) (discretionary denial) and exhibits 1043 (Declaration of Dr. Les Atlas,

Ph.D.)[1] and 1044 (*Zentian v. Amazon* Amended Scheduling Order), which have been appropriately updated.

Joinder would therefore have little, if any, impact on the Apple IPR because no new grounds would be added, the schedule would be unaffected, no additional briefing or discovery would be required, and no additional burdens would be placed on the Patent Owner, as detailed below. Accordingly, joinder is appropriate because it ensures a just, speedy, and inexpensive resolution of these proceedings. *Samsung Elecs. Co., Ltd. v. Raytheon Co.*, IPR2016-00962, Paper 12 at 9 (PTAB Aug. 24,

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[1] The Instant Petition is supported by a declaration from Dr. Les Atlas, Ph.D. (Ex. 1043), who considered the Declaration of Christopher Schmandt, submitted in the Apple IPR (IPR2023-00037, Ex. 1003 (Dec. 2, 2022)) and the opinions set forth therein. Dr. Atlas agrees with Mr. Schmandt's opinions and adopts them as his own. Therefore, the declaration of Dr. Atlas is substantively identical to the declaration of Mr. Schmandt and does not expand on the scope of expert opinions provided by Mr. Schmandt in the Apple IPR. *See Everlight Elecs. Co. v. Document Security Sys.*, Inc., IPR2018-01260, Paper 12 at 6-7 (PTAB Nov. 14, 2018) (granting motion for joinder where petitioner submitted separate but substantially identical expert declaration).

2016) (recognizing that the Board "routinely grants motions for joinder where the party seeking joinder introduces identical arguments and the same grounds raised in the existing proceeding.").

C. The Instant Petition Does Not Raise Any New Grounds of Unpatentability

The Instant Petition relies on the same grounds of unpatentability of claims 1-8 of the '140 Patent that were instituted in the Apple IPR. *See* IPR2023-00037, Paper 10 (PTAB. June 12, 2023). As discussed above, the evidence and arguments supporting the Instant Petition are substantively identical to the evidence and arguments supporting the Apple IPR.

D. Joinder Will Not Affect the Schedule in the Apple IPR

Joinder will not affect the schedule in the Apple IPR, because Petitioners agree to the deadlines set forth in the Apple IPR Scheduling Order. *See* IPR2023-00037, Paper 11 (PTAB June 12, 2023). Since the Instant Petition does not raise any new arguments and is substantively identical to the Apple IPR petition, there should be no need for Patent Owner to submit a preliminary response to the Instant Petition. Joinder would allow the Board and parties to focus on the merits of the unpatentability challenges to claims 1-8 of the '140 Patent in a single consolidated proceeding without duplication of effort, and in an efficient manner.

E. Joinder will Simplify Briefing Because Petitioners Have Agreed to Consolidated Filings and an Understudy Role

Petitioners agree to take an "understudy" role as long as Apple remains a party to the Apple IPR, which will simplify briefing and discovery.[2] *See, e.g.*, *Noven Pharm., Inc. v. Novartis AG*, IPR2014-00550, Paper 38 at 5 (PTAB April 10, 2015). In this role, Petitioners agree to the following conditions:

(a) Petitioners will not make any substantive filings and shall be bound by the filings of Apple, unless a filing concerns termination and settlement, or issues solely involving Petitioners.

(b) Petitioners will not present any argument or make any presentation at oral hearing unless an issue solely involves Petitioners, or when addressing Board-approved motions that do not affect Apple or the merits of Apple's Petition or arguments.

(c) Petitioners will not seek to cross-examine or defend the cross-examination of any witness, unless the topic of cross-examination concerns issues solely involving Petitioners, within the time permitted by Apple alone and with Apple's agreement.

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[2] In the event Apple no longer participates in the IPR proceedings, Petitioners would take over primary responsibility for subsequent filings and discovery.

(d) Petitioners will not seek discovery from Patent Owner, unless issues arise that are unique to, and only applicable to, Petitioners.

(e) Petitioners will not rely on expert testimony beyond that submitted by Apple unless and until Apple is terminated as party to the proceedings, prior to any necessary depositions. Petitioners' expert, Dr. Atlas, adopts the opinions set forth in the declaration of Dr. Schmandt submitted in the Apple IPR and adds no new opinions. Dr. Atlas will not actively participate in these proceedings, unless and until Apple is terminated as a party.

F. Joinder Will Not Prejudice Patent Owner

Petitioners' joining of the Apple IPR should not result in any prejudice to Patent Owner. No additional grounds or arguments are being introduced, no new evidence or issues are being added, and no additional discovery, briefing or oral argument should be necessary as a result of the Instant Petition and joinder. Additionally, joinder decreases the number filings by the parties, eliminates duplication of effort, and will create case management efficiencies for the Board and Patent Owner.

III. CONCLUSION

For the reasons above, Petitioners respectfully request that their Petition for *Inter Partes* Review of the '140 Patent be instituted, and that Petitioners be joined to the Apple IPR, IPR2023-00037.

Dated: July 12, 2023

Respectfully submitted,

FENWICK & WEST LLP

/J. David Hadden/

J. David Hadden
Reg. No. 40,629
Attorneys for Petitioners
Amazon Web Services, Inc. and Amazon.com Services LLC

CERTIFICATION OF SERVICE ON PATENT OWNER

I hereby certify, pursuant to 37 C.F.R. §§ 42.6(e) and 42.105, that a complete copy of this **Petitioners' Motion for Joinder Under 35 U.S.C. § 315(c), 37 C.F.R. § 42.22 and § 42.122(b),** is being served via Federal Express on July 12, 2023, upon Patent Owner by serving the correspondence address of record with the USPTO as follows:

Finnegan, Henderson, Farabow, Garrett & Dunner LLP
901 New York Avenue, NW
Washington, DC 20001-4413

Further, a courtesy copy of this Motion for Joinder is being served upon counsel of record for Patent Owner in the litigation pending before the U.S. District Court for the Western District of Texas entitled *Zentian Ltd v. Amazon.com Inc.*, Case No. 6:22-cv-00123-ADA (W.D. Tex.) as follows:

John M. Hughes
Katherine L.I Hacker
Bartlit Beck LLP
1801 Wewatta Street, Suite 1200
Denver, CO 80202

John Francis Luman , III
Daniels & Tredennick PLLC
6363 Woodway, Suite 700
Houston, TX 77057

Katherine E. Rhoades
Nevin M. Gewertz
Rebecca T. Horwitz
Bartlit Beck LLP
54 West Hubbard Street, Suite 300
Chicago, IL 60654

/J. David Hadden/
J. David Hadden
Reg. No. 40,629

Attorneys for Petitioners
Amazon Web Services, Inc. and
Amazon.com Services LLC