

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

T-Mobile USA, Inc., AT&T Services Inc., AT&T Mobility LLC, AT&T Corp.,
Cellco Partnership d/b/a Verizon Wireless, Nokia of America Corporation,
Ericsson Inc.
Petitioners

v.

Cobblestone Wireless LLC
Patent Owner

Case IPR2024-00136
U.S. Patent No. 8,891,347

**PETITIONERS' REPLY TO THE
PATENT OWNER PRELIMINARY RESPONSE**

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EXHIBIT LIST

Exhibit No.	Description
1014	<i>Cobblestone Wireless, LLC v. T-Mobile USA, Inc.</i> , No. 2:22-cv-00477-JRG-RSP (E.D. Tex.) (Lead Case), Dkt. 13, Consolidation Order
1015	<i>Cobblestone Wireless LLC v. Cellco Partnership d/b/a Verizon Wireless et al.</i> , 2:23-cv-00382 (E.D. Tex.) (Lead Case), Dkt. 19, Consolidation Order
1016	<i>Cobblestone Wireless LLC v. Cellco Partnership d/b/a Verizon Wireless et al.</i> , 2:23-cv-00382 (E.D. Tex.) (Lead Case), Dkt. 93, Defendants' Opposed Motion to Consolidate Cases
1017	<i>Cobblestone Wireless, LLC v. Samsung Electronics America, Inc. et al.</i> , No. 2:22-cv-00285-JRG-RSP (E.D. Tex.), Dkt. 44, Samsung's Opposition to Cobblestone's Motion to Modify Protective Order
1018	<i>Cobblestone Wireless LLC v. Cellco Partnership d/b/a Verizon Wireless et al.</i> , 2:23-cv-00382 (E.D. Tex.) (Lead Case), Dkt. 66, Docket Control Order
1019	<i>Cobblestone Wireless, LLC v. Samsung Electronics America, Inc. et al.</i> , No. 2:22-cv-00285-JRG-RSP (E.D. Tex.), Dkt. 48, Limited Intervention Order
1020	<i>Cobblestone Wireless, LLC v. Samsung Electronics America, Inc. et al.</i> , No. 2:22-cv-00285-JRG-RSP (E.D. Tex.), Dkt. 46, T-Mobile, AT&T, and Verizon's Response in Opposition to Plaintiff's Motion to Modify Protective Order
1021	<i>Cobblestone Wireless, LLC v. Samsung Electronics America, Inc. et al.</i> , No. 2:22-cv-00285-JRG-RSP (E.D. Tex.), Dkt. 30, Docket Control Order
1022	<i>Cobblestone Wireless, LLC v. Samsung Electronics America, Inc. et al.</i> , No. 2:22-cv-00285-JRG-RSP (E.D. Tex.), Dkt. 43, Cobblestone's Opposed Motion to Modify Protective Order
1023	<i>Cobblestone Wireless, LLC v. T-Mobile USA, Inc.</i> , No. 2:22-cv-00477-JRG-RSP (E.D. Tex.) (Lead Case), Dkt. 70, Order Granting Intervention
1024	<i>Cobblestone Wireless LLC v. Cellco Partnership d/b/a Verizon Wireless et al.</i> , 2:23-cv-00382 (E.D. Tex.) (Lead Case), Dkt. 65, Order Granting Intervention

Exhibit No.	Description
1025	<i>Cobblestone Wireless LLC v. Cellco Partnership d/b/a Verizon Wireless et al.</i> , 2:23-cv-00382 (E.D. Tex.) (Lead Case), Dkt. 64, Order Granting Intervention

Pursuant to the Board’s email on April 18, 2024, T-Mobile USA, Inc. (“T-Mobile”), AT&T Services Inc., AT&T Mobility LLC, AT&T Corp. (collectively “AT&T”), Cellco Partnership d/b/a Verizon Wireless (“Verizon”), Nokia of America Corporation (“Nokia”), and Ericsson Inc. (“Ericsson”) (collectively, “Petitioners”) submit this Reply to Patent Owner’s Preliminary Response (Paper 12, “POPR”).

I. INTRODUCTION

First, Patent Owner’s *Fintiv* analysis ignores the impact of (i) Petitioner’s recently filed motion to consolidate its district court case with a later filed case against the same Petitioners, *Cobblestone Wireless LLC v. Cellco Partnership d/b/a Verizon Wireless et al.*, 2:23-cv-00382 (E.D. Tex.) (the “Carrier 2.0 Cases”), and (ii) *Cobblestone Wireless, LLC v. Samsung Electronics Co., Ltd. et al.*, No. 2:23-cv-00285 (E.D. Tex.) (the “Samsung Case”). Cobblestone ignores Samsung’s and Petitioners’ Opposition to Cobblestone’s Motion for a Protective Order filed in the Samsung Case, which shows the procedural quagmire Cobblestone created in the district court that will have to be untangled. Once the cases are untangled (whether through consolidation or otherwise), Petitioners expect that the schedules will be shifted to more closely reflect the schedule set forth in the Samsung Case. In that even, consolidation will extend discovery for six months and trial will be

rescheduled for May 2025. Thus, Patent Owner’s analysis of at least *Fintiv* factors 2 and 3 does not consider this potential consolidation, and, thus, is incomplete.

Second, Patent Owner’s argument that the Consolidated Trial Practice Guide (“CTPG,” Nov. 2019 Update”) prohibits Petitioners and Samsung from filing separate petitions on the same patent is unfounded. Petitioners and Samsung are not the same petitioner, co-petitioners, nor co-defendants in any lawsuit. Thus, the CTPG’s guidance on multiple petitions is inapplicable. Moreover, Petitioners and Samsung are not significantly related parties. While the Petition identifies Samsung as a potential RPI, it does so “[o]ut of an abundance of caution” and “[t]o avoid additional issues associated with real parties in interest”—*not* because Petitioners and Samsung have any control over the other’s district court case or IPR filings. Petition, 2-3. In short, Petitioners’ interests are entirely separable from Samsung’s interests, and Petitioners should not be precluded from its own IPR just because of overlapping prior art.

II. BACKGROUND

1. The Carrier 1.0 and 2.0 Cases

On December 15-16, 2022, Patent Owner separately sued AT&T, Verizon, and T-Mobile in the Eastern District of Texas in what the Petitioners call the “Carrier 1.0 Cases.” In each case, Patent Owner accused the same technology and products of infringing the same patents, including the ’347 Patent. On February 6, 2023, Chief

Judge Gilstrap consolidated the three cases. Ex. 1014. On April 13, 2023, Nokia and Ericsson intervened in the Carrier 1.0 Cases since the accused products included Ericsson and Nokia base stations. Ex. 1023.

Then, on August 25, 2023, Patent Owner again separately sued AT&T, Verizon, and T-Mobile in the same district (the “Carrier 2.0 Cases”), accusing the same products and similar technology of infringing an additional patent. *Cobblestone Wireless LLC v. Cellco Partnership d/b/a Verizon Wireless et al.*, 2:23-cv-00382 (E.D. Tex.) (Lead Case). On November 2, 2023, Judge Gilstrap consolidated those three cases. Ex. 1015. Nokia and Ericsson also intervened in the Carrier 2.0 Cases. Ex. 1024; Ex. 1025.

2. The Samsung Case

Months after suing Petitioners, on June 16, 2023, Patent Owner *separately* sued Samsung in the same district (the “Samsung Case”), asserting infringement of the same patents in the Carrier 1.0 Cases, by the same technology but exclusively accusing *Samsung base stations*. *Cobblestone Wireless, LLC v. Samsung Electronics Co., Ltd. et al.*, No. 2:23-cv-00285 (E.D. Tex.). On December 18, 2023, Samsung separately petitioned for *IPR* review of the ’347 Patent. Samsung and Petitioners are represented by different counsel, in both the district court cases and the *IPR* proceedings before the Board.

3. Opposed Motion to Consolidate and Opposed Motion to Modify the Protective Order

On December 15, 2023, Petitioners moved to consolidate the Carrier 1.0 Cases with Carrier 2.0 Cases, which largely follows the same schedule as the Samsung Case. Ex. 1016; Ex. 1018; Ex. 1021. Patent Owner opposed the motion, claiming the cases were unrelated and different. On February 22, 2024, Patent Owner moved to modify the protective order in the Samsung Case in a way that would allow Patent Owner to unilaterally utilize Samsung discovery from that case into the Carrier 1.0 and 2.0 Cases. Ex. 1022. Petitioners and Samsung are *separately* opposing Patent Owner's motion. Ex. 1020; Ex. 1017.

At the end of the day, the Court is faced with numerous potential issues all of Patent Owner's own making: (i) seven different jury trials, (ii) impermissible double recovery, (iii) inconsistent *Markman*'s, and (iv) self-serving discovery practices. These issues can only be untangled by moving the district court case schedules so that they are consistent across the cases.

III. INSTITUTION IS APPROPRIATE UNDER *FINTIV*

Discretionary denial under *Fintiv* is inappropriate for the reasons stated in the Petition (at 66-69). Further, the POPR does not consider the extended case schedule in the Carrier 2.0 Cases or the Samsung Case. If consolidation is granted, fact discovery will be extended to December 6, 2024, expert discovery to February 3, 2025, and trial will be scheduled for May 19, 2025. Ex. 1018, 1, 3.

Under this schedule, which Petitioners already moved for, neither discovery nor expert reports will be complete before the June 11, 2024 institution decision deadline. The trial will be set to occur May 19, 2025, which is less than a month before a final written decision would be expected on the '347 Patent if instituted. Any concerns Patent Owner has regarding the case schedule would be moot.

The POPR does not address consolidation issues, which undermines Patent Owner's arguments that *Fintiv* factors 2 and 3 "weigh heavily against institution." POPR, 29-37. Moreover, on March 13, 2024, Petitioners were granted a limited intervention in the Samsung Case to oppose Patent Owner's attempted modification of the Protective Order in that case. Ex. 1019; Ex. 1020, 8-10. In that opposition, Petitioners pointed out the faults in Patent Owner's attempts to prevent consolidation. *Id.* Petitioners believe the likelihood of consolidation is even higher. Patent Owner's *Fintiv* arguments in the POPR ignore these important considerations, cutting against their conclusion that the factors weigh against institution.

IV. PETITIONERS AND SAMSUNG ARE NOT THE SAME OR SIGNIFICANTLY RELATED PARTIES

Petitioners and Samsung are separate. Both have separate interests, were sued in separate cases, have separate schedules, have separate counsel, and are accused of separately infringing the same patents. Petitioners' and Samsung's liability is separable. Moreover, the Samsung petition was filed before Patent Owner filed any response or the Board provided any guidance. Indeed, Samsung filed its Petition near

the same time Petitioner filed its original Petition. Thus, the *General Plastic* factors—to the extent they should even apply at all—weigh heavily in favor of Petitioners. This is simply not a situation where there is any unfairness or gamesmanship.

The CTPG addresses the situation where different petitioners challenge the same patent and states the Board considers the relationship, if any, between the petitioners when weighing the *General Plastic* factors.¹ Here, Petitioners and Samsung list each other as potential RPI out of an abundance of caution and *because Patent Owner created a tangled web of overlapping district court litigation involving both parties*. This RPI designation does not mean that Samsung and Petitioners are the same or significantly related parties. Petitioners have no control over Samsung’s actions, and vice versa. Accordingly, Petitioners are entitled to their

¹ The CTPG also states when “a petitioner files two or more petitions challenging the same patent” should that petitioner identify “a ranking of the petitions in the order in which it wishes the Board to consider the merits.” CTPG, 59-60. This does not apply here and highlights the non-sensical nature of Patent Owner’s argument, which stated that Petitioner should have ranked its own Petition with a not-yet-filed petition submitted by another petitioner.

own petition and should not be precluded from institution just because Samsung also filed a petition.

Petitioner cites *Valve Corp. v. Elec. Scripting Products*, which is inapplicable here; Petitioners and Samsung do not have “the very same ‘substantial relationship’ identified in *Valve*” as Patent Owner urges. POPR, 49; IPR2019-00062, Paper 11, 2 (precedential) at 9–10. In contrast to *Valve*, here, Petitioners and Samsung are not codefendants. Patent Owner sued Petitioners and Samsung many months apart in different cases accusing overlapping, but different technology. Without more, a common desire to challenge validity of an asserted patent is insufficient to establish a “significant relationship.” See *Sony Mobile Comms. AB v. Ancora Tech., Inc.*, IPR2021-00663, Paper 17 at 10–11 (Jun. 10, 2021).²

Thus, Petitioners respectfully request that the Board grant institution.

Dated: April 29, 2024

Respectfully submitted,

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² In addition, Patent Owner supports its unfounded theory with language from a recently *proposed* PTO rule, which was published on the federal register for public comment.

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CERTIFICATION OF SERVICE (37 C.F.R. §§ 42.6(e), 42.105(a))

The undersigned hereby certifies that true and correct copies of the above-captioned PETITIONERS' REPLY TO THE PATENT OWNER PRELIMINARY RESPONSE and all associated exhibits were served in their entireties on April 29, 2024, upon the following parties via the Patent Trial and Appeal Case Tracking System (P-TACTS) and electronic mail:

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