

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 CORPORATION, CELLCO PARTNERSHIP D/B/A VERIZON
WIRELESS, NOKIA OF AMERICA CORPORATION, ERICSSON INC.,
Petitioners,

v.

COBBLESTONE WIRELESS LLC,
Patent Owner.

Case IPR2024-00136
Patent 8,891,347 B2

PATENT OWNER'S AUTHORIZED PRELIMINARY SUR-REPLY

TABLE OF CONTENTS

	Page
I. THE <i>FINTIV</i> FACTORS OVERWHELMINGLY FAVOR DENIAL OF INSTITUTION.....	1
II. PETITIONERS FAIL TO JUSTIFY TWO PARALLEL PETITIONS.....	6

EXHIBIT LIST	
2001	<i>Cobblestone Wireless, LLC v. T-Mobile USA, Inc.</i> , No. 2:22-cv-00477 (lead case) (E.D. Tex., docket entry dated Feb. 14, 2024)
2002	<i>Samsung Elecs. Am., Inc. et al. v. Cobblestone Wireless, LLC</i> , IPR2024-00319, Paper 3 (IPR Petition) (PTAB Dec. 18, 2023)
2003	Federal Court Management Statistics for the Eastern District of Texas through December 2023, <i>available at</i> https://www.uscourts.gov/statistics-reports/federal-court-management-statistics-december-2023
2004	<i>Cobblestone Wireless, LLC v. T-Mobile USA, Inc.</i> , No. 2:22-cv-00477, Dkt. No. 1 (Complaint for Patent Infringement) (E.D. Tex. Dec. 16, 2022)
2005	<i>Cobblestone Wireless, LLC v. AT&T Servs. Inc. et al.</i> , No. 2:22-cv-00474, Dkt. No. 1 (Complaint for Patent Infringement) (E.D. Tex. Dec. 15, 2022)
2006	<i>Cobblestone Wireless, LLC v. Cellco P'ship d/b/a Verizon Wireless</i> , No. 2:22-cv-00478, Dkt. No. 1 (Complaint for Patent Infringement) (E.D. Tex. Dec. 16, 2022)
2007	<i>Cobblestone Wireless, LLC v. Cellco P'ship d/b/a Verizon Wireless</i> , No. 2:22-cv-00478, Dkt. No. 11 (Proof of Service of Summons to Cellco Partnership d/b/a/ Verizon Wireless) (E.D. Tex. Dec. 23, 2022)
2008	<i>Cobblestone Wireless, LLC v. AT&T Servs. Inc. et al.</i> , No. 2:22-cv-00474, Dkt. No. 12 (Proof of Service of Summons to AT&T Mobility LLC) (E.D. Tex. Dec. 23, 2022)
2009	<i>Cobblestone Wireless, LLC v. AT&T Servs. Inc. et al.</i> , No. 2:22-cv-00474, Dkt. No. 13 (Proof of Service of Summons to AT&T Services Inc.) (E.D. Tex. Dec. 23, 2022)
2010	<i>Cobblestone Wireless, LLC v. AT&T Servs. Inc. et al.</i> , No. 2:22-cv-00474, Plaintiff Cobblestone Wireless, LLC's Preliminary Disclosure of Asserted Claims and Infringement Contentions (E.D. Tex., served Mar. 13, 2023)

EXHIBIT LIST	
2011	<i>Cobblestone Wireless, LLC v. Cellco P'Ship d/b/a Verizon Wireless</i> , No. 2:22-cv-00478, Plaintiff Cobblestone Wireless, LLC's Preliminary Disclosure of Asserted Claims and Infringement Contentions (E.D. Tex., served Mar. 13, 2023)
2012	<i>Cobblestone Wireless, LLC v. T-Mobile USA, Inc.</i> , No. 2:22-cv-00477, Plaintiff Cobblestone Wireless, LLC's Preliminary Disclosure of Asserted Claims and Infringement Contentions (E.D. Tex., served Mar. 13, 2023)
2013	<i>Cobblestone Wireless, LLC v. T-Mobile USA, Inc.</i> , No. 2:22-cv-00477 (lead case), Defendants' and Intervenor's Preliminary Invalidity Contentions for U.S. Patent No. 8,891,347 (E.D. Tex., served May 12, 2023)
2014	<i>Cobblestone Wireless, LLC v. T-Mobile USA, Inc.</i> , No. 2:22-cv-00477, Dkt. No. 11 (Unopposed Application for Extension of Time to Answer Complaint) (E.D. Tex. Dec. 22, 2022)
2015	<i>T-Mobile USA, Inc. et al. v. Cobblestone Wireless, LLC</i> , IPR2024-00135, Paper 1 (IPR Petition) (PTAB Nov. 22, 2023)
2016	<i>T-Mobile USA, Inc. et al. v. Cobblestone Wireless, LLC</i> , IPR2024-00137, Paper 1 (IPR Petition) (PTAB Dec. 4, 2023)
2017	<i>T-Mobile USA, Inc. et al. v. Cobblestone Wireless, LLC</i> , IPR2024-00138, Paper 1 (IPR Petition) (PTAB Nov. 30, 2023)
2018	Verizon's Feb. 13, 2024 Non-Infringement Contentions in Case No. 2:22-cv-477
2019	Declaration In Support Of Patent Owner's Motion For <i>Pro Hac Vice</i> Admission Of Nathan Nobu Lowenstein
2020	<i>Cobblestone Wireless, LLC v. T-Mobile USA, Inc.</i> , No. 2:22-cv-00477, Dkt. No. 117 (Markman Hearing Minute Order) (E.D. Tex. May 2, 2024)
2021	Docket As Of May 9, 2024 In <i>Cobblestone Wireless, LLC v. Samsung Electronics America, Inc. et al.</i> , No. 2:23-cv-00285 (E.D. Tex.)
2022	Docket As Of May 9, 2024 In <i>Cobblestone Wireless, LLC v. T-Mobile USA, Inc. et al.</i> , No. 2:22-cv-00477 (E.D. Tex. May 2, 2024).

EXHIBIT LIST	
2023	<i>Cobblestone Wireless, LLC v. T-Mobile USA, Inc.</i> , No. 2:22-cv-00477 (lead case), Dkt. No. 98 (Plaintiff's Opposition to Motion to Consolidate) (E.D. Tex. Jan. 12, 2024)

Petitioners' Reply confirms that institution should be denied.

I. THE *FINTIV* FACTORS OVERWHELMINGLY FAVOR DENIAL OF INSTITUTION.

The POPR (at 25-43) demonstrated why all six *Fintiv* factors weigh against institution. As discussed below, Petitioners dispute almost none of Patent Owner's *Fintiv* analysis. Instead, they only argue that Patent Owner overlooked their long-shot motion to consolidate the parallel district court case with a trailing case.

Reply, 4-5. But even if, *arguendo*, that motion is granted, trial would be moved to May 19, 2025, which is still approximately a month before the FWD here. *Id.*

Furthermore, Petitioners' motion is very unlikely to be granted anyways, and Petitioners present no evidence to suggest otherwise. Petitioners' argument fails.

The Board "takes a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review." *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, 5-6 (Mar. 20, 2020) (precedential). Petitioners present no such "holistic" analysis. In fact, they present no analysis beyond arguing that Patent Owner's analysis of factors 2 and 3 is incomplete. Reply, 4-5. Nor do they cite a single authority. Even considering Petitioners' consolidation motion, the overall *Fintiv* analysis, mostly undisputed, still supports denial of institution.

Factor 1. It is undisputed that no stay of the parallel district court litigation has been granted or is likely. POPR, 27-28.

Factor 2. It is undisputed that the current district court trial date is firmly

set for September 23, 2024 absent consolidation, and is over eight months before the FWD deadline. POPR, 29-30. As later explained, Petitioners' consolidation motion is unlikely to be granted, and Petitioners present no evidence to suggest otherwise. Even with consolidation, the trial date would be May 19, 2025. Reply, 4-5. That is still approximately one month before the June 11, 2025 FWD deadline which may be extended even further to December 11, 2025. POPR, 29 n.3. The remote possibility of moving the trial date to a new date that is still before the FWD does not change the overall balancing of this factor. *Nine Energy Service, Inc. v. NCS Multistage Inc.*, IPR2020-01615, Paper 18, 9 (Mar. 24, 2021) (pending motion to transfer did not change overall balancing of *Fintiv* factor where "there is no evidence to suggest that trial will be delayed.").

Factor 3. It is undisputed that at the time of institution, extensive work will have been completed in the district court litigation. POPR, 33-37. Markman briefing is already complete and the Markman hearing was held on May 2, 2024. POPR, 33; Ex. 2020. Fact discovery is scheduled for completion by mid-May 2024, and the last witnesses are being deposed. Ex. 1011. Petitioners argue that if their long-shot motion for consolidation is granted, then "fact discovery will be extended to December 6, 2024." Reply, 4. But even in that unlikely scenario, in addition to *Markman*, fact discovery will have been completed, and the witnesses already deposed, by the time of institution, even if the deadline for fact discovery

may nominally change. Thus, with or without the consolidation motion, extensive work will already have been completed by the institution decision deadline.

Factor 4. It is undisputed that the same claims based on the same art are challenged in both the district court and the IPR. POPR, 37-38. Significantly, Petitioners' Reply still does not provide a *Sotera* stipulation that, if this IPR is instituted, they would not pursue in the parallel district court grounds that could have reasonably been raised in the Petition. POPR, 39-40; Interim Discretionary Denial Memo (Ex. 1012) at 7–8. Thus, Petitioners have deliberately not “mitigate[d] concerns of potentially conflicting decisions and duplicative efforts between the district court and the PTAB.” *Id.* Instead, they attempt to maintain two bites at the apple (plus two more bites by their RPI, Samsung). POPR, 42-43.

Factor 5. It is undisputed that Petitioners are defendants in the parallel district court litigation. POPR, 41.

Factor 6. Multiple additional considerations weigh against institution, none of which are mitigated by Petitioners' Reply. First, Petitioners created the *Fintiv* concerns by delaying filing of their Petition to just weeks before their statutory deadline, despite being aware of their grounds for at least six months before initiating this proceeding. POPR, 36, 42. Petitioner's Reply does not provide any explanation for this undue delay. Second, Petitioners' self-designated real party in interest, Samsung, has brought a “copycat” petition raising the exact same ground

as the Petition here, as well as another unrelated ground, challenging exactly the same patent claims. POPR, 42-43. Petitioners do not justify why two largely duplicative petitions should both be instituted—even disregarding their weak merits. Thus, the “holistic” *Fintiv* analysis mandates denial of institution.

Again, Petitioners’ only response is to point to its consolidation motion that is long-pending and unlikely to be granted and, even if it were, still would not put the trial date before the FWD deadline. As a preliminary matter, contrary to the Reply’s insinuation, no motion has been filed to consolidate the *Carrier 1.0* and *Samsung* cases. Reply, 4 (“the POPR does not consider the extended case schedule in ... the Samsung Case.”); 1 (“Petitioners expect that the schedules will be shifted to more closely reflect the schedule set forth in the Samsung Case.”); Ex. 2021 [Samsung-Docket] (showing no entry for a motion to consolidate); Ex. 2022 [Carrier 1.0-Docket] (showing only Dkt. # 93 for consolidation of Carrier 1.0 and 2.0 cases). *Samsung* has no bearing on this IPR or the *Carrier 1.0* trial schedule.

Although Petitioners have moved to consolidate *Carrier 1.0* and *Carrier 2.0* cases, that motion has been pending for six months and is unlikely to be granted now after close of discovery and shortly before trial. But timing aside, Petitioners’ motion lacks merit for reasons explained in Patent Owner’s opposition. See Ex. 2023 [Opposition]. In sum, there are no overlapping patents, patent families, inventors, or claim construction issues. *Id.*, 5-7. Thus, the Reply’s concerns (at 4)

for “inconsistent *Markman*’s” and “impermissible double recovery” are unfounded. Similarly, there is no “procedural quagmire” or issues to be “untangled” (Reply, 1): Carrier 1.0 and 2.0 cover different patents and patent families. In fact, the presiding judge in the district court cases, Judge Gilstrap, *sua sponte* divided and consolidated the cases pending between Petitioners and Patent Owner into two groups: the first group involving the ’347 and other families (Carrier 1.0), and the second group involving an entirely different family (Carrier 2.0). This further suggests Judge Gilstrap is unlikely to consolidate Carrier 1.0 and 2.0 cases now.

Nor is Judge Gilstrap likely to grant a consolidation that would result in an eight-month postponement of the Carrier 1.0 trial. While Petitioners’ motion has been pending for nearly six months since December 15, 2023 (Reply, 4), and while fact and expert discovery are both to be completed within approximately a month of filing of this brief, Judge Gilstrap has not granted Petitioners’ motion. This is consistent with Judge Gilstrap’s practice of denying consolidations that would result in long delays, even where the cases have far more in common than here.

See, e.g., Entropic Commc’ns, LLC v. Charter Commc’ns, Inc., No. 2:22-cv-00125, 2023 WL 5613185, *1-2 (E.D. Tex. Aug. 29, 2023) (Gilstrap, J.) (denying consolidation due to a ten-month trial delay, even though patents in both cases “share a specification and inventors, and have similar claims,” because “[t]he cases are simply too far apart for [consolidation] to be practical”).

Grasping at straws, Petitioners attempt to make much of a routine discovery motion in the irrelevant *Samsung* case. Reply, 4. There, Patent Owner filed a motion to modify the protective order to allow use of certain Samsung discovery productions in the Carrier 1.0 and 2.0 case. *Id.* This modification was necessary because Samsung refuses to comply with subpoenas in the carrier cases. Samsung and Petitioners have opposed this motion. Yet, on its face, this routine discovery motion in *Samsung* has no bearing on the trial date in Carrier 1.0 cases, or on whether Carrier 1.0 and 2.0 cases may be consolidated.

II. PETITIONERS FAIL TO JUSTIFY TWO PARALLEL PETITIONS.

As the POPR (at 44-46) explained, Petitioners and Samsung filed separate petitions within two weeks of each other, both challenging the same claims of the same patent based on the same “copycat” ground, and Samsung including an additional ground based on cumulative art. In their petitions, both Petitioners and Samsung identified each other as real parties-in-interest. POPR, 44-45. Petitioners and Samsung failed, and continue to fail, to provide any ranking of their parallel petitions as required by Board practice. CTPG, 59-60; POPR, 50-51. Nor have they provided any justification for maintaining two petitions in parallel. *Id.*

Petitioners first argue that they are not real parties-in-interest with Samsung. Reply, 6-7. But both Petitioners’ and Samsung’s petitions separately stated that they are. POPR, 44-45. Even after the POPR, Petitioners have filed updated

mandatory notices, but did not modify the identification of RPIs. Paper, 13.

Furthermore, Petitioners have provided no evidence why Samsung, which is still listed as an RPI in both proceedings, is not a real party in interest.

Petitioners' gamesmanship should be rejected. Petitioners are in exclusive possession of evidence that determines whether a party is an RPI. In accord, under 35 U.S.C. § 312(a)(2), an IPR petition "may be considered only if ... the petition identifies all real parties in interest." "[A]n IPR petitioner's initial identification of the real parties in interest should be accepted unless and until disputed by a patent owner." *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1242 (Fed. Cir. 2018). This scheme would be undermined if Petitioners can simultaneously argue that a party is and is not an RPI, or to self-servingly remove an RPI with no factual evidence.

Petitioners also argue that the ranking requirement for parallel petitions does not apply here because of the two-week filing delay between the two petitions. Reply, 6 n.1. But the CTPG (at 59) clearly discusses parallel petitions where the petitions are filed "***about*** the same time (***e.g., before the first preliminary response by the patent owner***).” Nor is there merit to Petitioners’ argument that they could not have ranked their Petition with the “not-yet-filed” Samsung petition. The Petition could have discussed the “to-be-filed” petition. Samsung could have also provided a ranking in its petition. None of this happened. Even with the Reply, Petitioners have still failed to provide any ranking between the petitions.

Respectfully submitted,

/ Kenneth J. Weatherwax /

Kenneth J. Weatherwax, Reg. No. 54,528
Nathan Lowenstein, *pro hac vice* motion
pending
Parham Hendifar, Reg. No. 71,470
LOWENSTEIN & WEATHERWAX LLP

Date: May 9, 2024

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following documents were served by electronic service, by consent between the parties (Pet. at 4), on the date signed below:

PATENT OWNER'S AUTHORIZED PRELIMINARY SUR-REPLY

EXHIBITS 2020-2023

The names and address of the parties being served are as follows:

John.Haynes@alston.com (John D. Haynes)
David. Frist@alston.com (David Frist)
Michael.Deane@alston.com (Michael C. Deane)
A&BCobblestone@alston.com

Respectfully submitted,

/ Keith Moore /

Date: May 9, 2024