

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.,
Petitioner,

v.

COBBLESTONE WIRELESS LLC,
Patent Owner.

IPR2024-00137
Patent 9,094,888

PATENT OWNER'S PRELIMINARY SUR-REPLY

PATENT OWNER'S EXHIBIT LIST

No.	Description
Ex. 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)
Ex. 2002	<i>Samsung Elecs. Am., Inc. et al. v. Cobblestone Wireless, LLC</i> , IPR2024-00315, Paper 3 (IPR Petition) (PTAB Dec. 18, 2023)
Ex. 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
Ex. 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)
Ex. 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)
Ex. 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)
Ex. 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)
Ex. 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)
Ex. 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)
Ex. 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)
Ex. 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

No.	Description
	Disclosure of Asserted Claims and Infringement Contentions (E.D. Tex., served Mar. 13, 2023)
Ex. 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)
Ex. 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. 9,094,888 (E.D. Tex., served May 12, 2023)
Ex. 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)
Ex. 2015	<i>T-Mobile USA, Inc. et al. v. Cobblestone Wireless, LLC</i> , IPR2024-00135, Paper 1 (IPR Petition) (PTAB Nov. 22, 2023)
Ex. 2016	<i>T-Mobile USA, Inc. et al. v. Cobblestone Wireless, LLC</i> , IPR2024-00136, Paper 1 (IPR Petition) (PTAB Dec. 4, 2023)
Ex. 2017	<i>T-Mobile USA, Inc. et al. v. Cobblestone Wireless, LLC</i> , IPR2024-00138, Paper 1 (IPR Petition) (PTAB Nov. 30, 2023)
Ex. 2018	<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)

I. Petitioners’ ill-conceived consolidation motion is unlikely to be granted.

Petitioners incorrectly state they have moved to consolidate the litigations in which the ’888 Patent is asserted (“Carrier 1.0 Cases”) with both later-filed cases against them (“Carrier 2.0 Cases”) and a case against Samsung (“Samsung Case”). Reply 1. Petitioners only moved to consolidate the Carrier 1.0 and 2.0 Cases (Ex. 1232); no one has proposed consolidating either with the Samsung Case.

Petitioners’ motion is unlikely to be granted for the reasons in Patent Owner’s opposition to it. Ex. 2018. In sum, there are no overlapping patents, patent families, inventors, or claim construction issues; the accused functionalities differ; and the cases were filed eight months apart—consolidation would result in an *eight-month trial delay*. *Id.* Judge Gilstrap routinely denies consolidations that would result in such 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”). There is no reason to believe Judge Gilstrap would grant Petitioners’ motion here. Thus, the relevant trial date for the *Fintiv* analysis is September 23, 2024. Ex. 1012, 1.

The Board has applied the currently set trial date and denied institution under

Fintiv even where a motion was pending that could, in theory if granted, result in a delay of the trial date. For example, in *Nine Energy Service, Inc. v. NCS Multistage Inc.*, the Board applied the currently set trial date even though a motion to transfer was pending and consolidation with another matter was a possibility. IPR2020-01615, Paper 18, 9 (PTAB Mar. 24, 2021). The Board explained it “agree[d] with Patent Owner based on the evidence of record, there is no evidence to suggest that trial will be delayed,” and relied on the fact the final written decision would issue five months after the currently set trial date to find that Factor 2 weighed in favor of denying institution. *Id.* There, the patent owner explained the motion to transfer was unlikely to be granted due to its lack of merit and consolidation with another earlier-stage matter was unlikely because “[t]here is no reason to believe Judge Albright will extend the [parallel] litigation for the [later-stage] litigation,” further noting that “Judge Albright has issued separate trial schedules for each case.” *Id.*, 8-9.

The same principles apply here. As explained above, it is unlikely that Judge Gilstrap will grant Petitioners’ consolidation motion due to the lack of overlapping issues and the long delay in getting to trial. Moreover, Judge Gilstrap *sua sponte* consolidated the Carrier 1.0 Cases with one another (Ex. 1230) and the Carrier 2.0 Cases with one another (Ex. 1231). He did not opt to consolidate the Carrier 1.0 and 2.0 Cases, but as Judge Albright did in the case discussed above, issued separate scheduling orders with differing trial dates for those two sets of cases. *See Nine*

Energy, 9. Factor 2 weighs in favor denying institution here because the currently set trial date is many (here, over eight, compared to five in *Nine Energy*) months before the deadline for a final written decision to issue. *See* POPR 26-30.

Petitioners contend, without support or explanation, that “the Board need not speculate on whether Petitioner’s motion[to consolidate] will be granted in whole or in part, [because] the briefing shows the schedule will have to be moved to untangle the procedural mess Patent Owner caused in the district court.” Reply 4. There is no reason the trial date in the Carrier 1.0 Cases will need to move—there is no “procedural mess” or “procedural quagmire” to be “untangled.” *See id.*, 1, 3-4. Patent Owner filed the Carrier 1.0 Cases on certain patents, and later filed the Carrier 2.0 Cases on another unrelated patent; consolidation of these two sets of cases is highly unlikely for the reasons discussed above. To the extent Petitioners are implying there will be a case extension resulting from a motion to modify a protective order that Patent Owner filed in the Samsung Case, as addressed in more detail below, that motion and that case as a whole are irrelevant to the issues here and will not impact the trial date in the Carrier 1.0 Cases.

II. Patent Owner’s discovery motion in the Samsung Case bears no relevance to the *Fintiv* analysis.

Petitioners make much of Patent Owner’s pending discovery motion to modify a protective order in the Samsung Case to permit cross-use of discovery. This discovery motion has no bearing on the trial date or the *Fintiv* analysis. There

is no motion to consolidate the Carrier 1.0 Cases with the Samsung Case; the only pending consolidation request is of the Carrier 1.0 and 2.0 Cases. *See* Ex. 1232.

Patent Owner's discovery motion asks the court to allow Patent Owner to use certain Samsung confidential information produced in the Samsung Case in the cases against the carriers. *See* Ex. 1238. This discovery motion was needed because Samsung refused to produce the materials at issue in response to subpoenas in the carrier cases. *Id.*, 2-3. Either the court will grant the motion and permit the cross-use, or the Court will deny it. Either way, the trial date in the Carrier 1.0 Cases would not move as a result. Petitioners' motion for limited intervention to oppose Patent Owner's motion in the Samsung Case likewise has no effect on the trial date.

Petitioners incorrectly argue that Patent Owner's discovery motion for the ability to use the Samsung confidential information in both the Carrier 1.0 and 2.0 Cases somehow demonstrates the Carrier 1.0 and 2.0 Cases are "so similar" to each other as to support consolidation. *See* Reply 3. As discussed above, different patents from different patent families with different inventors are asserted in the two cases, and the accused functionalities also differ. Rather, the reason Patent Owner asked for use of the Samsung information in both carrier cases is because both the patents asserted in the Carrier 1.0 Cases as well as the patent asserted in the Carrier 2.0 Cases are asserted in the Samsung Case; thus, Samsung is expected to produce materials relevant to both the Carrier 1.0 and 2.0 Cases in the Samsung Case. Ex. 1238, 4. But

the collective similarity of the Carrier 1.0 and 2.0 Cases *with the Samsung case* does not mean that the Carrier 1.0 and 2.0 Case are similar enough *with each other* to warrant consolidation.

III. Even assuming the consolidation motion is granted, the Board should still exercise its discretion to deny institution.

Contrary to Petitioners' suggestion, the schedule in the Samsung Case is irrelevant because no one has proposed consolidating the Carrier 1.0 Cases with it. Rather, Petitioners' motion asks the court to consolidate the Carrier 1.0 and 2.0 Cases and to set both cases on the Carrier 2.0 schedule. Ex. 1232. In any event, the trial date in the Carrier 2.0 Cases (May 19, 2025, Ex. 1234) is only slightly later than that in the Samsung Case (May 5, 2025, Ex. 1237 at 1).

Here, the deadline for a final written decision is May 29, 2025, which may be extended to January 29, 2026, for good cause or in the case of joinder (which is very likely here). *See* POPR 26. Thus, even assuming the consolidation motion is granted, trial will still occur before the Board issues its final written decision—even without an extension to accommodate joinder. Exercising discretion to institute IPR here is particularly apt where (1) Petitioners unduly delayed filing the Petition, filing just a month before the statutory deadline; (2) there is perfect overlap in the claims and the art at issue in the IPR and the Carrier 1.0 Cases; and (3) Petitioners fail to offer a *Sotera* stipulation to quell the concerns stemming from this overlap. *Id.*, 32-37.

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Respectfully submitted,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e)(1))

The undersigned hereby certifies that the above document was served on April 17, 2024, by filing this document through the Patent Trial and Appeal Case Tracking System as well as delivering a copy via electronic mail upon the following attorneys of record for the Petitioners:

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