

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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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

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Case IPR2024-00138  
U.S. Patent No. 10,368,361 B2

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

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**EXHIBIT LIST**

| <b>Exhibit No.</b> | <b>Description</b>                                                                                                                                                                                                                   |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1020</b>        | <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.                                                                                            |
| <b>1021</b>        | <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                                                                            |
| <b>1022</b>        | <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                                                |
| <b>1023</b>        | <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                               |
| <b>1024</b>        | <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                                                                           |
| <b>1025</b>        | <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                                                                            |
| <b>1026</b>        | <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 |
| <b>1027</b>        | <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                                                                                  |
| <b>1028</b>        | <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                                               |
| <b>1029</b>        | April 12, 2024 E-mail from Ms. Fair to Mr. Barton                                                                                                                                                                                    |

Pursuant to the Board’s email on April 3, 2024, 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, and Ericsson Inc. (“Petitioners”) submit this Reply to Patent Owner’s Preliminary Response (Paper 10, “POPR”).

## **I. INTRODUCTION**

Patent Owner’s analysis of the *Fintiv* factors 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”).

As to consolidation, although Patent Owner originally opposed the motion, Patent Owner has now affirmatively stated that they intend to *move the Court* to consolidate the ’361 Patent into the Carrier 2.0 cases, stating that “[o]therwise, I think we’ll need to move to compel, and . . . *we plan to alternatively propose the ’361 be moved to the second case.*” Ex. 1029. Asking the Court to move the trial date back six months effectively eviscerates their *Fintiv* argument.

In addition, 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 (further supported by their own admission that the district court trial date for the '361 Patent will have to change). 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. Consolidation will extend discovery for six months and trial will be rescheduled for May 2025. Patent Owner's analysis of at least *Fintiv* factors 2 and 3 does not consider this potential consolidation, and, thus, is incomplete.

## **II. BACKGROUND**

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 '361 Patent. On February 6, 2023, Chief Judge Gilstrap consolidated the three cases. Ex. 1020.

Months later, on June 16, 2023, Patent Owner sued Samsung in the same district (the "Samsung Case"), also asserting infringement of the same patents, including the '361 Patent, by the same technology. *Cobblestone Wireless, LLC v. Samsung Electronics Co., Ltd. et al.*, No. 2:23-cv-00285 (E.D. Tex.).

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. 1021.

On December 15, 2023, Petitioners moved to consolidate the Carrier 1.0 Cases with Carrier 2.0 Cases, which largely followed the same schedule as the Samsung Case. Ex. 1022; Ex. 1027. 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 because, now when viewed from this perspective, the actions were apparently so similar a cross-use agreement was needed. Ex. 1028. Petitioners and Samsung are opposing Patent Owner's motion. Ex. 1026; Ex. 1023.

Recently, on April 12, 2024, Patent Owner informed Petitioners that they intend to ask that the '361 Patent be consolidated into the later Carrier 2.0 Cases. Ex. 1029, 1 (stating "we plan to alternatively propose the '361 be moved to the second case")<sup>1</sup>. If granted, this request will move the trial to May 19, 2025. Ex. 1024.

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<sup>1</sup> Patent Owner does not oppose Petitioners submitting this email as an Exhibit to Petitioners Reply. At this time, Petitioners have not accepted Patent Owner's

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 70-73). Further, the POPR does not take into consideration the extended case schedule in the Carrier 2.0 Cases or the Samsung Case. If the district court grants Petitioners' motion to consolidate its case with the Carrier 2.0 Cases, 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. 1024, 1, 3.

Under this schedule, which Petitioners have already moved for *and Patent Owner now intends to move for*, neither discovery nor expert reports will be

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proposal to move the '361 Patent into the Carrier 2.0 Cases. Ex. 1029, 1. However, the effect here remains the same: if Petitioners accept the proposal, then the '361 Patent will be moved to Carrier 2.0 Cases schedule; if Petitioners reject the proposal, Patent Owner intends to move the district court to grant the same relief.

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 '361 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, 26-34. 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. 1025; Ex. 1026, 8-10. In that opposition, Petitioners pointed out the faults in Patent Owner's attempts to prevent consolidation. *Id.* Petitioners believe that the likelihood of consolidation is even higher, especially now that Patent Owner also intends to move the '361 Patent to the later schedule.

*Fintiv* factors 2 and 3 weigh against discretionary denial based on the potential for an extended district court schedule and trial date, and the likelihood of this taking place in light of Patent Owner's recent proposal to consolidate the '361 Patent into the Carrier 2.0 Cases. Patent Owner's *Fintiv* arguments in the POPR ignore these important considerations, cutting against their conclusion that the factors weigh against institution. Further, factor 4 arguably weighs even more heavily in favor of institution, given the expanded breadth of the consolidated case.

Thus, Petitioners respectfully request that the Board grant institution.

Dated: April 17, 2024

Respectfully submitted,

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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 17, 2024, upon the following parties via the Patent Trial and Appeal Case Tracking System (P-TACTS) and electronic mail:

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