

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.

IPR2024-00138
Patent 10,368,361

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> , IPR2024-00316, 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)

No.	Description
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 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. 10,368,361 (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> , IPR2024-00137, Paper 1 (IPR Petition) (PTAB Nov. 22, 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)
Ex. 2019	Email exchange between Patent Owner's counsel (J. Ma and A. Fair) with Petitioners' counsel (M. Deane, E. Welch, R. Barton, and A. Ahnhut), dated April 6-22, 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 ’361 Patent is asserted (“Carrier 1.0”) with both later-filed carrier cases (“Carrier 2.0”) and a case against Samsung (“Samsung Case”). Reply 1. Petitioners only moved to consolidate Carrier 1.0 and 2.0. Ex. 1022.

Petitioners’ motion is unlikely to be granted because there are no overlapping patents, families, inventors, or *Markman* issues; the accused functionalities differ; and consolidation would result in an **8-month trial delay**. Ex. 2018. Judge Gilstrap routinely denies consolidations that would result in long delays, even where cases have far more in common than here. *See Entropic v. Charter*, 2023 WL 5613185, *1-2 (E.D. Tex. 2023) (denying consolidation due to a 10-month 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.

The Board has applied the set trial date and denied institution even where a motion was pending that could result in delay. In *Nine Energy v. NCS Multistage*, the Board applied the set trial date even though a transfer motion was pending and consolidation with another matter was possible. IPR2020-01615, Paper 18, 9 (2021). The Board “agree[d] with Patent Owner [that] based on the evidence of record, there is no evidence to suggest that trial will be delayed,” noting the FWD would issue 5

months after the set date. *Id.* There, the patent owner explained the transfer motion lacked merit and consolidation was unlikely because “[t]here is no reason to believe Judge Albright will extend the [parallel] litigation for the [later-stage] litigation,” further noting he “has issued separate trial schedules for each case.” *Id.* 8-9.

The same principles apply here. It is unlikely Judge Gilstrap will grant consolidation due to lack of overlapping issues and the long delay. Moreover, Judge Gilstrap *sua sponte* consolidated the three Carrier 1.0 cases (Ex. 1020) and the three Carrier 2.0 cases (Ex. 1021). He did not opt to consolidate the Carrier 1.0 and 2.0 Cases, but issued scheduling orders with differing trial dates. *Nine Energy* 9. Factor 2 weighs in favor denying institution here because the currently set trial date is over 8 months (compared to 5 in *Nine Energy*) before the FWD deadline. POPR 34-38.

There is no reason the Carrier 1.0 trial date will need to move—there is no “procedural mess” or “procedural quagmire” to be “untangled.” *See* Reply 1, 4. If Petitioners are implying there will be a case extension resulting from a motion that Patent Owner filed in the Samsung Case, as addressed below, that motion and that case as a whole are irrelevant and will not impact the Carrier 1.0 trial date.

II. Patent Owner has no intention to move the Court to place allegations concerning the ’361 Patent into Carrier 2.0.

Petitioners claim “Patent Owner has now affirmatively stated that they intend to move the Court to consolidate the ’361 Patent into the Carrier 2.0 cases.” Reply

1. *Petitioners' statement is entirely false and lacks any evidentiary support.* Patent Owner never made this representation; nor does it have any intention to so move. Rather, Patent Owner proposed, as a compromise to a dispute that arose near the close of fact discovery in Carrier 1.0 (Petitioners' refusal to provide certain witnesses related to the '361 Patent), the parties agree to move the '361 Patent to Carrier 2.0. Ex. 1029 1. Patent Owner did **not** represent it intended to move the court for this relief; rather, it stated if the parties cannot agree on this compromise, it will seek **alternative relief** such as "mov[ing] to compel" deposition testimony. *Id.*

Six days after Patent Owner suggested this compromise, and the morning after they filed their Reply, Petitioners finally responded, rejecting it. Ex. 2019 5. Patent Owner then stated its "inten[tion] to move forward with the 30(b)(6) depositions on the dates we noticed" on the topics related to the '361 Patent and to seek relief from the court if Petitioners fail to appear. *Id.* 1-5. Patent Owner is vigorously litigating the '361 Patent in Carrier 1.0 and has no intention to move the court to consolidate it into Carrier 2.0. Petitioners' repeated statements to the contrary (Reply 1, 3 n.1, 5) serve no purpose but to confuse the issues and mislead the Board.

Petitioners' undisputably false statements also violate their duty of candor, for which the Board can order them to show cause as to why they have not violated that duty and why they should not be sanctioned. 37 C.F.R. §§ 42.11(a)-(d) (subsection (c) citing § 11.18(b)(2) (requiring "factual contentions have evidentiary support")).

III. 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 Carrier 1.0 with the Samsung Case; the only pending consolidation request is of Carrier 1.0 and 2.0. *See* Ex. 1022.

Patent Owner's discovery motion asks the court to allow Patent Owner to use Samsung confidential information produced in the Samsung Case in the carrier cases. *See* Ex. 1028. This 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 Carrier 1.0 trial date would not move. Petitioners' motion for limited intervention to oppose this motion likewise has no effect on the trial date.

Petitioners incorrectly argue Patent Owner's discovery motion for the ability to use the Samsung confidential information in both Carrier 1.0 and 2.0 somehow demonstrates Carrier 1.0 and 2.0 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, Patent Owner asked for use of the Samsung

information in both carrier cases because both the patents asserted in Carrier 1.0 and the patent asserted in Carrier 2.0 are asserted in the Samsung Case; thus, Samsung will produce materials relevant to both the carrier cases. Ex. 1028, 4. But the collective similarity of Carrier 1.0 and 2.0 *with the Samsung case* does not mean Carrier 1.0 and 2.0 are similar enough *with each other* to warrant consolidation.

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

Contrary to Petitioners' suggestion, the Samsung Case schedule is irrelevant because no one has proposed consolidating Carrier 1.0 with it. Ex. 1022. In any event, the trial date in Carrier 2.0 (May 19, 2025, Ex. 1024 1) is only slightly later than that in the Samsung Case (May 5, 2025, Ex. 1027 1).

Here, the deadline for a FWD 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 34-35. Thus, even assuming consolidation occurs, trial will still occur before the Board issues its FWD—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 Carrier 1.0; and (3) Petitioners fail to offer a *Sotera* stipulation to quell the concerns stemming from this overlap. *Id.* 43-45.

Date: May 1, 2024

Respectfully submitted,

/Amy E. Hayden/

Reza Mirzaie, Reg. No. 69,138

Amy E. Hayden, Reg. No. 64,817

Neil A. Rubin, Reg. No. 67,030

Peter Tong, Reg. No. 74,292

RUSS, AUGUST & KABAT

12424 Wilshire Blvd., 12th Floor

Los Angeles, CA 90025

Tel.: 310-826-7474

Fax: 310-826-6991

ahayden@raklaw.com

nrubin@raklaw.com

ptong@raklaw.com

rak_cobblestone@raklaw.com

Counsel for Patent Owner

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

The undersigned hereby certifies that the above document was served on May 1, 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:

John D. Haynes (Reg. No. 44,754)
David S. Frist (Reg. No 60,511)
Michael C. Deane (Reg. No. 70,389)
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309
Tel.: 404-881-7000
Fax: 404-881-7777
John.Haynes@alston.com
David.Frist@alston.com
Michael.Deane@alston.com
A&BCobblestone@alston.com

Date: May 1, 2024

/Amy E. Hayden/
Reza Mirzaie, Reg. No. 69,138
Amy E. Hayden, Reg. No. 64,817
Neil A. Rubin, Reg. No. 67,030
Peter Tong, Reg. No. 74,292
RUSS, AUGUST & KABAT
12424 Wilshire Blvd., 12th Floor
Los Angeles, CA 90025
Tel.: 310-826-7474
Fax: 310-826-6991
ahayden@raklaw.com
nrubin@raklaw.com
ptong@raklaw.com
rak_cobblestone@raklaw.com

Counsel for Patent Owner