

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AFFORDABLE WIRE MANAGEMENT, LLC,
Petitioner,

v.

CAMBRIA COUNTY ASSOCIATION FOR THE BLIND AND HANDICAPPED,
INC.,
Patent Owner.

IPR2024-00182
Patent 11,349,291

**PATENT OWNER'S RESPONSE TO PETITIONER'S EXPLANATION OF
MULTIPLE PETITIONS CHALLENGING U.S. PATENT NO. 11,349,291**

I. INTRODUCTION

Patent Owner Cambria County Association for the Blind and Handicapped, Inc. (“CAB”) submits its Response to Petitioner Affordable Wire Management, LLC’S (“AWM”) Explanation of Multiple Petitions (“EMP”) filed in IPRs 2024-00178 (“the ‘178 petition”) and 2024-00182 (“the ‘182 petition”). There is substantial overlap in claim language among the claims and claim elements in the ‘291 patent. Moreover, there is substantial overlap in the claims challenged in AWM’s two petitions. AWM’s ‘178 petition only challenges two claims not challenged in the ‘182 petition. AWM’s ‘182 petition only challenges four claims not challenged in the ‘178 petition. There is no reason why these six non-overlapping claims could not have been included in a single petition. In addition, the prior art references are substantially overlapping between petitions. The ‘182 petition only asserts two grounds, the first ground introducing a new prior art reference, and the second ground combining that prior art reference with a reference already asserted in the ‘178 petition.

II. MORE THAN ONE PETITION IS NOT WARRANTED

Absent exceptional circumstances, only one petition should be filed against a single patent. The Consolidated Trial Practice Guide (“CTPG”) provides only two examples of when multiple petitions *may* be necessary. CTPG at 59. AWM only argues one of them, namely, large number of claims in litigation. AWM asserts that

CAB had not identified which of the '291 patent's 25 claims it would be asserting in related district court litigation ("Litigation"), and that the length of the claims alone consumed almost 10% of the petition's word count limit. EMP, 2. AWM omits, however, that CAB's infringement contentions in the Litigation were due on December 21, 2023, and CAB served AWM with its contentions on that date. CAB asserted only 14 of the 25 claims. *See* EX. 2003 ('178 petition) and EX. 2002 ('182 petition) (AWM's Invalidity Contentions served in the Litigation identifying the claims asserted by CAB). None of the non-overlapping claims between the '178 and '182 petitions are among the claims asserted by CAB.

AWM had until January 23, 2024, to file an IPR petition, and thus had ample time between CAB's deadline for serving infringement contentions and AWM's deadline for filing an IPR to ascertain the number of claims that CAB was asserting in the Litigation. Instead, by rushing to file its IPR petitions, AWM has now filed two petitions challenging the same set of claims asserted by CAB in the Litigation. The possibility that additional claims may be asserted at a later time does not justify parallel petitions. *See., e.g., Apple Inc. v. Speir Techs. Ltd.*, IPR2023-00543, Paper 8 at 10 (P.T.A.B. Aug. 8, 2023) (denying a parallel petition where "Petitioner filed [the second petition] just in case Patent Owner asserts additional claims"). Moreover, two petitions would not be justified even if CAB had asserted all 25 claims in the Litigation – the '291 Patent has 5 independent

claims, and there is substantial overlap in claim language among the independent and dependent claims.

AWM also contends that multiple petitions are justified because each petition challenges different claims and relies on different prior art. There is significant overlap between the limitations of independent claims 1 and 6, and the limitations of independent claims 14 and 19. Additionally, dependent claims 2-5 are identical to dependent claims 15-18 except that they depend from different independent claims; dependent claim 8 is identical to dependent claim 20 except that they depend from different independent claims; and the limitations of dependent claims 11 and 13 are repeated in dependent claim 23. Similarity between claims undermines any necessity to institute a parallel proceeding. *See Apple Inc.*, IPR2023-00543 Paper 8 at 9 (denying petition and observing that “the claims are more similar than Petitioner suggests.”). Because of this overlap in claim limitations, AWM could have more efficiently grouped its challenges to the claims limitations. Its inefficiency in failing to do so does not justify a second Petition.

Petitioner's contention that each Petition “challenge[s] a unique set of claims” is simply not true. EMP at 3. The same 19 of the '291 Patent's 25 claims are challenged in each Petition. In addition, AWM introduces only one prior art reference in the '182 petition that was not in the '178 petition, CAB Catalog. The '182 petition asserts two separate grounds, one based on CAB Catalog alone, and

one based on CAB Catalog and Almy, a reference that was also asserted in the '178 petition. For these two grounds, based on only one reference in addition to the references asserted in the '178 petition, AWM has imposed “a substantial and unnecessary burden on the Board and [CAB],” and has created “fairness, timing and efficiency concerns.” CTPG at 59.

There is nothing unique in this case that differentiates AWM's strategic choices from the strategic choices faced by all petitioners. Word limits require petitioners to choose which theories and prior art references they assert in an IPR, just like word limits require patent owners to choose which defenses to submit. AWM has not presented any reason justifying the imposition of this substantial burden on the Board and CAB. The Board considers whether a Petitioner could have asserted *at least one* ground of unpatentability for each challenged claim, not whether it could assert *all* potential grounds in one petition. *Fantasia Trading LLC v. Cognipower LLC*, IPR2021-00070 Paper 21 at 10-11 (P.T.A.B. May 20, 2021); *see also Samsung Elecs. Co., Ltd. v. Lynk Labs, Inc.*, No. IPR2022-00150, Paper 15 at 10 (P.T.A.B. July 5, 2022).

AWM must “explain[], with good reason,” why its prior art combinations are not equivalent. *Comcast Cable Commc'ns, LLC v. Rovi Guides, Inc.*, No. IPR2019-01432, Paper 10 at 8 (P.T.A.B. Jan. 23, 2020); *see also* CTPG at 60. Its explanation that it would like to assert more prior art and combinations than can be addressed

in one petition is not “good reason.” *See Microsoft Corp. v. D3d Techs., Inc.*, IPR2021-00877, Paper 14 at 10 (P.T.A.B. Dec. 10, 2021).

Several of the *General Plastic* factors weigh in favor denying AWM's request to file multiple petitions challenging the same patent. First, AMW's multiple petitions essentially are directed to the same claims (Factor 1). The differences between the claims challenged in each Petition are immaterial. AWM obviously was aware of the CAB Catalog reference asserted in its '182 petition when it filed its '178 petition (Factor 2). AWM could readily have included grounds based on CAB Catalog in its '178 petition, particularly as the '182 petition asserts CAB Catalog in combination with the Almy reference already asserted in the '178 petition. AWM has placed unnecessary burden and expense on the Board and CAB by filing multiple petitions (Factor 6). AWM justifies imposing this burden, in part, by asserting its lack of knowledge of how many claims CAB would assert in the Litigation. Had AWM waited for CAB's infringement contentions in the Litigation before precipitously filing multiple petitions, it would have realized that CAB was asserting only 14 claims in the Litigation, and that those 14 claims could easily have been challenged in a single petition.

For all these reasons, CAB respectfully requests that the Board deny AWM's request to file multiple petitions.

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 15th day of February, 2024, a true and correct copy of the foregoing **PATENT OWNER'S RESPONSE TO PETITIONER'S EXPLANATION OF MULTIPLE PETITIONS CHALLENGING U.S. PATENT NO. 11,349,291** was served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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