

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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VIANT TECHNOLOGY LLC,
Petitioner,

v.

INTENT IQ, LLC,
Patent Owner.

IPR2025-00129
Patent 7,861,260 B2

Before NABEEL U. KHAN, SCOTT B. HOWARD, and DAVID COTTA,
Administrative Patent Judges.

HOWARD, *Administrative Patent Judge.*

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314
Granting Motion for Joinder
35 U.S.C. § 315(c); 37 C.F.R. § 42.122

INTRODUCTION

A. Background and Summary

Viant Technology LLC (“Petitioner”) filed (1) a Petition to institute an *inter partes* review (Paper 4, “Pet.”) of claims 1, 6, 8–10, 21, 23–26, 29–34, 38–40, 42, 43, 45–53, 55, 59–61, 63–70, 76, 81, 82, 85, 87–89, 100, 102–104, 107–115, 117, 120–124, 126, 129–136, 142, 145–147, and 149–150 of U.S. Patent No. 7,861,260 B2 (Ex. 1001, “the ’260 patent”) and (2) a Motion for Joinder (Paper 3, “Mot.”) with *FreeWheel Media, Inc. v. Intent IQ LLC*, IPR2024-00422 (“FreeWheel IPR”).¹ We instituted an *inter partes* review in the FreeWheel IPR on October 2, 2024. FreeWheel IPR, Paper 10. Intent IQ, LLC² (“Patent Owner”) did not file a Patent Owner Preliminary Response or an Opposition to Petitioner’s Motion for Joinder in this proceeding.

We have authority, acting on the designation of the Director, to determine whether to institute an *inter partes* review under 35 U.S.C. § 314

¹ Petitioner misidentified the caption of the proceeding. We corrected the caption in the Institution Decision in that proceeding. FreeWheel IPR, Paper 10.

² Petitioner identifies AlmondNet, Inc. as the owner of the ’260 patent and that name was reflected in the Notice of Filing Date Accorded. *See* Pet.; Paper 5 (Notice of Filing Date Accorded). However, Intent IQ, LLC identifies itself as the actual owner of the ’260 patent. *See* Paper 6, 1 (Patent Owner’s Mandatory Notices). The USPTO assignment database includes an assignment that was filed transferring ownership rights from AlmondNet, Inc. to Intent IQ, LLC. Accordingly, we have modified the caption and the parties should use the caption of this document for all further submissions.

If a party contends that Intent IQ, LLC is not the proper patent owner, they must do so in a paper submitted no more than two weeks from the date this decision was mailed.

and 37 C.F.R. § 42.4(a). *Inter partes* review may not be instituted unless “the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a) (2024). “When instituting *inter partes* review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.” 37 C.F.R. § 42.108(a) (2024).

B. Real Parties in Interest

Petitioner identifies Viant Technology LLC, Adelphic LLC, and Viant US LLC as the real parties in interest. Pet. 73.

Patent Owner identifies itself as the real party in interest. Paper 6, 1.

C. Related Matters

Petitioner indicates that the ’260 patent was asserted against Petitioner in the United States District Court for the District of Delaware in *AlmondNet, Inc v. Viant Technology Inc., Inc.*, No. 1:23-cv-00174-MN (D. Del.). Pet. 73.

Additionally, the parties³ indicate the ’260 patent or its related patents are or were the subject of the following proceedings:

- *AlmondNet, Inc v. FreeWheel Media, Inc.*, No. 1:23-cv-00220-MN (D. Del.);
- *AlmondNet, Inc. v. Samsung Electronics Co.*, 4-22-cv-07515 (N.D. Cal.);
- *AlmondNet, Inc. v. Samsung Electronics Co.*, 6-21-cv-00891 (W.D. Tex.);

³ Patent Owner excluded matters which “have been terminated or in which the ’260 patent is no longer being asserted.” Paper 6, 1.

- *AlmondNet, Inc. v. Meta Platforms, Inc.*, 4-22-cv-08911 (N.D. Cal.);
- *AlmondNet, Inc. v. Meta Platforms, Inc.*, 6-22-cv-01205 (W.D. Tex.);
- *Roku, Inc. v. AlmondNet, Inc.*, 1-21-cv-01035 (D. Del.);
- *Meta Platforms, Inc. v. Intent IQ, LLC*, IPR2022-00773;
- *Amazon.com, Inc. v. Intent IQ, LLC*, IPR2023-00227;
- *Microsoft Corporation v. Intent IQ, LLC*, IPR2022-01420;
- *Roku, Inc. v. Intent IQ, LLC*, IPR2022-01236;
- *Yahoo! Inc. v. Intent IQ, LLC*, IPR2017-01299;
- *Roku, Inc. v. Intent IQ, LLC*, IPR2022-01315;
- *Meta Platforms, Inc. v. Intent IQ, LLC*, IPR2023-01281;
- *Samsung Electronics Co. v. AlmondNet, Inc.*, IPR2022-01505;
- *Samsung Electronics Co., v. Intent IQ, LLC*, IPR2022-01506;
- *Roku, Inc. v. Intent IQ, LLC*, IPR2022-00953;
- *Roku, Inc. v. Intent IQ, LLC*, IPR2022-00959;
- *Roku, Inc. v. Intent IQ, LLC*, IPR2022-00960;
- *Samsung Electronics Co. v. Intent IQ, LLC*, IPR2022-01507;
- *FreeWheel Media, Inc. v. Intent IQ, LLC*, IPR2024-00421;
- *FreeWheel Media, Inc. v. Intent IQ, LLC*, IPR2024-00422;
- *FreeWheel Media, Inc. v. Intent IQ, LLC*, IPR2024-00423;
- *FreeWheel Media, Inc. v. Intent IQ, LLC*, IPR2024-00424;

Pet. 73–77; Paper 6, 1.

We take official notice that Petitioner filed a second petition challenging the claims of the '260 patent. *See Viant Technology v. Intent IQ, LLC*, IPR2025-00128.

D. Prior Art and Asserted Grounds

Petitioner asserts that the challenged claims would have been unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §⁴	Reference(s)/Basis
1, 8, 9, 21, 24, 26, 31, 32, 34, 38, 39, 42, 53, 55, 61, 69, 76, 87, 88, 100, 103, 117, 121, 122, 135, 142, 145–147	103(a)	Baig, ⁵ Costa, ⁶ Zwicky ⁷
1, 8, 9, 21, 24, 26, 31, 32, 34, 38–40, 42, 45–48, 52, 53, 55, 61, 63–65, 68, 69, 76, 87, 88, 100, 103, 107–110, 114, 115, 117, 121–122, 129–131, 134, 135, 142, 145–147	103(a)	Baig, Costa, Banga ’690 ⁸
6, 8–10, 21, 23, 32, 51, 55, 59, 60, 67, 76, 81, 82, 85, 87–89, 100, 102, 113, 117, 120, 123, 124, 126, 133, 142, 145, 149, 150	103(a)	Baig, Costa, Zwicky, Howcroft ⁹
6, 8–10, 21, 23, 32,	103(a)	Baig, Costa, Banga ’690,

⁴ The Leahy-Smith America Invents Act (“AIA”) included revisions to 35 U.S.C. §§ 102 and 103 that became effective on March 16, 2013. Because the ’260 patent has an application filing date of April 17, 2007, we apply the pre-AIA version of the statutory basis for unpatentability. *See* Ex. 1001, code (22).

⁵ US 2008/0113674 A1, published May 15, 2008 (Ex. 1007).

⁶ US 2006/0128364 A1, published June 15, 2006 (Ex. 1011).

⁷ Zwicky, E. D., Cooper, S., & Chapman, D. B. (2000). *Building Internet Firewalls, 2nd edition*. O’Reilly & Associates (Ex. 1012). All citations use the native pagination.

⁸ US 2006/0271690 A1, published Nov. 30, 2006 (Ex. 1014).

⁹ US 2008/0201731 A1, published Aug. 21, 2008 (Ex. 1016).

Claim(s) Challenged	35 U.S.C. § ⁴	Reference(s)/Basis
51, 55, 59, 60, 67, 76, 81, 82, 85, 87–89, 100, 102, 113, 117, 120, 123, 124, 126, 133, 142, 145, 149, 150		Howcroft
49, 50, 66, 70, 111, 112, 132, 136	103(a)	Baig, Costa, Banga '690, Smith ¹⁰
33	103(a)	Baig, Costa, Zwicky, Middeljans ¹¹
25, 29, 33, 104	103(a)	Baig, Costa, Banga '690, Middeljans
30, 43	103(a)	Baig, Costa, Banga '690, Middeljans, Koningstein ¹²
50, 70, 112, 136	103(a)	Baig, Costa, Banga '690, Banga '633 ¹³

INSTITUTION OF *INTER PARTES* REVIEW

The Petition in this proceeding asserts the same grounds of unpatentability as the one on which we instituted review in the FreeWheel IPR. *Compare* Pet. 1–74, *with* FreeWheel IPR, Paper 10 at 7–9; *see also* Mot. 6.

Patent Owner did not file a Preliminary Response.

For the same reasons set forth in our institution decision in the FreeWheel IPR, we determine that the information presented in the Petition shows a reasonable likelihood that Petitioner would prevail in showing that

¹⁰ US 2003/0083938 A1, published May 1, 2003 (Ex. 1021).

¹¹ US 2002/0124050 A1, published Sep. 5, 2002 (Ex. 1023).

¹² US 2005/0096980 A1, published May 5, 2005 (Ex. 1024).

¹³ US 2008/0263633 A1, issued Oct. 23, 2008 (Ex. 1025).

claim 1 of the '260 patent is unpatentable. *See* FreeWheel IPR, Paper 10, 19–33. Accordingly, we institute an *inter partes* review on all of the challenged claims.

GRANT OF MOTION FOR JOINDER

We instituted trial in the FreeWheel IPR on October 2, 2024. FreeWheel IPR, Paper 7. Petitioner filed the Petition and Motion for Joinder on November 1, 2024. Because joinder was requested no later than one month after trial was instituted in the FreeWheel IPR, Petitioner's Motion for Joinder is timely. *See* 37 C.F.R. § 42.122(b) (2024).

The statutory provision governing joinder in *inter partes* review proceedings is 35 U.S.C. § 315(c), which reads:

If the Director institutes an *inter partes* review, the Director, in his or her discretion, may join as a party to that *inter partes* review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an *inter partes* review under section 314.

A motion for joinder should (1) set forth reasons why joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; (3) explain what impact (if any) joinder would have on the trial schedule for the existing review; and (4) address specifically how briefing and discovery may be simplified. *Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper 15 at 4 (PTAB Apr. 24, 2013).

The Petition asserts the same unpatentability grounds on which we instituted review in the FreeWheel IPR. *See* Mot. 1, 6. Specifically, Petitioner “challenges the validity of the '260 patent on identical grounds to those in the FreeWheel IPR. *See* IPR2024-00422, Paper 2 (March 1, 2024).

[Petitioner’s] supporting materials—including its supporting expert declaration, exhibits, and exhibit numbering—are identical to those presented in the FreeWheel IPR.” Mot. 6. Thus, this *inter partes* review does not present any ground or matter not already at issue in the FreeWheel IPR.

If joinder is granted, Petitioner anticipates participating in the proceeding in a limited capacity absent termination of the FreeWheel IPR petitioner as a party. Mot. 2; *see also id.* at 7–9. Petitioner states that it “will act as an ‘understudy’ and will not assume an active role unless the FreeWheel IPR Petitioner ceases to participate in the instituted IPR.” *Id.* at 2. Because Petitioner expects to participate only in a limited capacity, Petitioner submits that “joinder will not add any new substantive issues, delay the schedule, burden deponents, or needlessly increase filings, any additional costs on Patent Owner will be minimal.” *Id.* Petitioner further indicates that the FreeWheel petitioner does not oppose the request joinder. *Id.* at 1.

Patent Owner did not file an opposition to the motion for joinder.

We agree with Petitioner that joinder with the FreeWheel IPR is appropriate under the circumstances. Accordingly, we *grant* Petitioner’s Motion for Joinder.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of claims 1, 6, 8–10, 21, 23–26, 29–34, 38–40, 42, 43, 45–53, 55, 59–61, 63–70, 76, 81, 82, 85, 87–89, 100, 102–104, 107–115, 117, 120–124,

126, 129–136, 142, 145–147, and 149–150 of the '260 patent is instituted in IPR2025–00129;

FURTHER ORDERED that the Motion for Joinder with IPR2024-00422 is *granted*, and Petitioner is joined as a party to IPR2024-00422;

FURTHER ORDERED that all further filings by Petitioner and Patent Owner, except for those which concern a request for rehearing of this decision, shall be made only in IPR2024-00422;

FURTHER ORDERED that, subsequent to joinder, the grounds and claims for trial in IPR2024-00422 remain unchanged;

FURTHER ORDERED that, subsequent to joinder, the Scheduling Order in place for IPR2024-00422 (Paper 11) remains unchanged, subject to any changes already made by stipulation between Patent Owner and FreeWheel Media, Inc. (“FreeWheel”);

FURTHER ORDERED that, subsequent to joinder, Petitioner is bound by every paper filed by and every representation made by FreeWheel in IPR2024-00422, except for papers and representations regarding settlement between FreeWheel and Patent Owner;

FURTHER ORDERED that Petitioner shall make no filing and take no action in the joined proceeding unless (1) FreeWheel settles with Patent Owner and a Motion to Terminate FreeWheel from the joined proceeding has been filed, or (2) the filing is a motion to terminate the proceeding with respect to Petitioner, a settlement agreement between Petitioner and Patent Owner, or a request to keep settlement agreement separate under 37 C.F.R. § 42.74(c);

FURTHER ORDERED that Petitioner shall not receive any direct, cross examination, or redirect time beyond that permitted for FreeWheel

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alone, under either 37 C.F.R. § 42.53 or any agreement between FreeWheel and Patent Owner;

FURTHER ORDERED that the case caption in IPR2024-00422 shall be changed in accordance with the attached example; and

FURTHER ORDERED that a copy of this Decision shall be entered into the record of IPR2024-00422.

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¹ Viant Technology LLC was joined as a party to this proceeding via a Motion for Joinder in IPR2025-00129.