

Case No. IPR2024-00461

Patent No. 7,230,931

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NOKIA OF AMERICA CORPORATION

Petitioner

v.

GENERAL ACCESS SOLUTIONS, LTD.

Patent Owner

Case No. IPR2024-00461

Patent No. 7,230,931

**PETITIONER'S REPLY TO PATENT OWNER'S OPPOSITION TO
NOKIA OF AMERICA CORPORATION'S MOTION FOR JOINDER TO
INTER PARTES REVIEW IPR2023-00978**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PATENT OWNER’S ARGUMENTS WERE PREVIOUSLY REJECTED BY THE BOARD	1
III.	THE <i>GENERAL PLASTIC</i> FACTORS WEIGH IN FAVOR OF GRANTING PETITIONER’S MOTION AND PETITION.....	4
IV.	CONCLUSION.....	5

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Alcatel-Lucent USA Inc. v. Oyster Optics, LLC</i> , IPR2017-02146, Paper 12 (PTAB Feb. 28, 2018).....	5
<i>Cellco Partnership d/b/a Verizon Wireless v. General Access Solutions, Ltd. f/k/a Access Solutions, Ltd.</i> , IPR2023-00978, Paper 20 (PTAB December 14, 2023)	1, 2, 3, 4
<i>Code200 v. Bright Data, Ltd.</i> , IPR2022-00861, Paper 18 (Office of the Director of the USPTO Aug. 23, 2022)	5
<i>General Access Solutions, Ltd. v. T-Mobile US et al.</i> , Case No. 2-23-cv-00158 (E.D. Tex.).....	5

I. INTRODUCTION

Patent Owner's Opposition (Paper 7, "Opposition") primarily argues that the Board should deny Petitioner's Motion for Joinder ("Motion") under *General Plastic* because Nokia was at one point a supplier to Sprint, the petitioner in a previous IPR challenge to the '931 Patent, and because it would be a waste of "the Board's finite resources" to re-review what Patent Owner considers "strikingly similar challenges by related parties." Opposition, 4, 9. Patent Owner's arguments, however, are merely regurgitated from its pre-institution filings in IPR2023-00978 ("Verizon IPR") and were already rejected by the Board. *Cellco Partnership d/b/a Verizon Wireless v. General Access Solutions, Ltd. f/k/a Access Solutions, Ltd.*, IPR2023-00978, Paper 20 (PTAB December 14, 2023) ("Institution Decision"). Patent Owner also seems to ignore the fact that Petitioner is seeking to join an *instituted* IPR. Because Patent Owner has not presented any new, valid arguments as to why Petitioner should not be joined and because the *General Plastic* factors do not weigh in favor of denial, Petitioner respectfully requests that the Board grant its Motion for Joinder and its Petition for *inter partes* review of the '931 Patent.

II. PATENT OWNER'S ARGUMENTS WERE PREVIOUSLY REJECTED BY THE BOARD

Patent Owner asserts that, as to the first prong of the *General Factor* analysis, "discretionary denial is appropriate [] given the substantial relationship between

Sprint . . . and its supplier, Nokia.” Opposition, 4. Patent Owner argues that a “significant relationship” exists because Nokia supplied the base stations accused of infringement in a corresponding district court litigation against Sprint, a previous petitioner, and was indemnified for any infringement of the ’931 Patent. *Id.* at 4-6. Patent Owner contends that Nokia “should be found to be an unidentified real party in interest of privity of Sprint in its previous IPR.” *Id.*

As the Board confirmed in its Institution Decision, a supplier relationship is not sufficient to create a real party-in-interest or privity, and suppliers do not automatically have a “substantial relationship” with an IPR solely due to the existence of their relationship with a petitioner. Institution Decision, 16-18. The Board determined that, without additional supporting evidence, allegations of any such relationship amount to only mere speculation. *Id.* The same is true here. The simple existence of Nokia’s supplier relationship with Sprint does not make Nokia a real party-in-interest or privity to Sprint’s IPR. Likewise, Patent Owner’s assertion that Nokia has a “substantial interest in the outcome of these proceedings” (Opposition, 7) is mere speculation and fails to show that Nokia played any kind of role, significant or otherwise, in the previous Sprint IPR. Thus, there is no legally significant relationship between Nokia and Sprint that would warrant denial.

Patent Owner’s additional arguments similarly lack support and are insufficient to justify denial under *General Plastic*. Patent Owner’s argument

addressing factor two states that Sprint “should have known” about the prior art now presented and that Nokia’s new art is still dependent on the same primary reference and “cumulative of the art Sprint relied on” previously. Opposition, 7-8. As the Board found, however, Patent Owner has provided no evidence here that, at the time of filing the first petition in 2017, Nokia “knew or should have known of the art it would later assert in the Petition filed in” 2024. Institution Decision, 19. Moreover, the Board was very clear that the new art presented here (Atsuta, Goldberg, etc.) is *not* cumulative of art previously presented in the Sprint IPR. *Id.* at 26-27 (“we do not agree that Atsuta is cumulative of art previously presented to the Office”).

Patent Owner’s argument addressing factors three, four, and five—that “Petitioner had the benefit of reviewing” the Sprint IPR before filing this Petition—is equally unavailing. Opposition, 8-9. The Board addressed the exact same argument in its Institution Decision and found that the petitioner had filed its petition after the Sprint IPR and litigation against Sprint had already concluded and after the petitioner had been sued in a separate action alleging infringement of the two surviving claims; “it was not the same petitioner refining arguments by filing multiple, staggered petitions.” Institution Decision, 20. The facts are identical here. Further, Patent Owner does not argue that granting the present Petition and Motion would result in “undue equities and prejudices to Patent Owner.” *Id.*

Finally, Patent Owner’s concern with the Board’s “finite resources,”

addressing factors six and seven, has, again, already been abated by the Board's Institution Decision: the Petition does not ask the Board to re-review whether Vornefeld discloses the subject matter of the challenged claims and the Board is already reviewing the new art presented here in the *instituted* Verizon IPR that Nokia now seeks to join. *Id.* at 21. Thus, because all of Patent Owner's arguments fail in light of the Board's Institution Decision, Patent Owner has not shown that Petitioner's Motion and Petition warrants denial.

III. THE *GENERAL PLASTIC* FACTORS WEIGH IN FAVOR OF GRANTING PETITIONER'S MOTION AND PETITION

The *General Plastic* factors instead weigh heavily in favor of granting the present Motion and Petition, as the Board found under nearly identical circumstances in the Verizon IPR. As discussed above, indemnity alone is not sufficient to establish a supplier as a real party-in-interest or privy and, by extension, is inadequate to establish that a "legally sufficient relationship" exists between Nokia and the previous petitioner, Sprint. Institution Decision, 16-17. Nokia and Sprint are not privies with respect to the '931 Patent. There is no evidence to support that Nokia had any kind of substantial relationship with the Sprint IPR, as Nokia was not a party to and was not involved in Sprint's previous IPR. A mere desire to invalidate the same claims is also insufficient to establish such a relationship. *Id.* at 18. Because factor one indicates that Petitioner has not previously filed a petition against the

same patent, the additional factors two through five “bear little relevance” on the analysis. *Alcatel-Lucent USA Inc. v. Oyster Optics, LLC*, IPR2017-02146, Paper 12 at 12 (PTAB Feb. 28, 2018) (non-precedential).

As to factor six, the Board’s finite resources will not be wasted because this Petition seeks to join an already instituted IPR, the Verizon IPR, which the Board found merited institution and further review. Granting this Petition and Motion will further the Board’s mission to improve patent quality and ensure confidence in the presumption of validity. *Code200 v. Bright Data, Ltd.*, IPR2022-00861, Paper 18 at 6 (Office of the Director of the USPTO Aug. 23, 2022) (precedential).

Factor seven further weighs against denial: because Nokia’s Petition and Motion seek to join an already-instituted IPR, a final written decision is expected to issue in December 2024, well before *General Access Solutions, Ltd. f/k/a Access Solutions, Ltd. v. T-Mobile US et al.*, Case No. 2-23-cv-00158 (E.D. Tex.), to which Nokia is an intervenor, is set to go to trial in January 2025, at the earliest. Thus, the one-year statutory deadline is of no issue and all of the *General Plastic* factors taken together favor granting the present Motion and Petition.

IV. CONCLUSION

For the reasons given above, Nokia respectfully requests that its Petition for *Inter Partes* Review of the ’931 Patent be instituted and that Nokia be joined to the Verizon IPR proceeding IPR2023-00978.

Dated: March 18, 2024

Respectfully submitted,

/ John D. Haynes/
John D. Haynes, Reg. No. 44,754

CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. §§ 42.6(e), the undersigned certifies that on the 18th day of March, 2024, a complete and entire copy of PETITIONER’S REPLY TO PATENT OWNER’S OPPOSITION TO NOKIA’S MOTION FOR JOINDER was served on Patent Owner via electronic mail to the following attorneys of record for Patent Owner:

Sarah E. Spires - sspires@skiermontderby.com

Michael J. Valaik - michael.valaik@bartlitbeck.com

Nosson D. Knobloch - nosson.knobloch@bartlitbeck.com

Dated: March 18, 2024

Respectfully submitted,

/ John D. Haynes/
John D. Haynes
Reg. No. 44,754

Attorney for Petitioner