

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFESCAN, INC., SENSEONICS HOLDINGS, INC., and
ASCENSIA DIABETES CARE HOLDINGS AG,
Petitioner,

v.

CELLSPIN SOFT, INC.,
Patent Owner.

IPR2025-00103
Patent 9,900,766 B2

Before GREGG I. ANDERSON, CYNTHIA M. HARDMAN, and
MICHAEL A. VALEK, *Administrative Patent Judges*.

ANDERSON, *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

I. INTRODUCTION

LifeScan, Inc., Senseonics Holdings, Inc., and Ascensia Diabetes Care Holdings AG (“Petitioner” or “Joining Petitioners”) request *inter partes* review of claims 1–15 of U.S. Patent No. 9,900,766 B2 (“the ’766 patent,” Ex. 1003). Paper 1 (“Pet.”). Cellspin Soft, Inc. (“Patent Owner”) did not file a Preliminary Response.

Concurrently with the Petition, Petitioner filed a Motion for Joinder seeking joinder as a party to *TikTok Inc. v. Cellspin Soft, Inc.*, IPR2024-00769 (the “769 IPR”). Paper 5 (“Mot.”). Patent Owner did not respond to Petitioner’s Motion for Joinder.

We have authority under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” We also have authority to consider Petitioner’s Motion for Joinder. *See* 35 U.S.C. § 315(c); 37 C.F.R. § 42.122.

Based on the current record and for the reasons explained below, we (1) institute an *inter partes* review of claims 1–15 of the ’766 patent on all challenges in the Petition; and (2) grant Petitioner’s Motion for Joinder subject to the conditions detailed below.

II. BACKGROUND

A. Real Parties in Interest

Petitioner identifies LifeScan, Inc., LifeScan Global Corporation, Senseonics Holdings, Inc., Senseonics, Incorporated, Ascensia Diabetes Care Holdings AG, and Ascensia Diabetes Care, Inc. as real parties in interest. Pet. 114. Patent Owner identifies itself (Cellspin Soft, Inc.) as the real party in interest. Paper 8 (Patent Owner Mandatory Notices) 2.

B. Related Matters

Petitioner and Patent Owner identify the following district court actions involving the '766 patent: *Cellspin Soft, Inc. v. ByteDance, Ltd. et al.*, 2:23-cv-496 (E.D. Tex.); *Cellspin Soft, Inc. v. LifeScan, Inc.*, 2:24-cv-286 (E.D. Tex.); *Cellspin Soft, Inc. v. Senseonics Holdings, Inc. et al.*, 2:24-cv-263 (E.D. Tex.). Pet. 114; Paper 8, 2.

Petitioner and Patent Owner both identify the 769 IPR. Pet. 114; Paper 8, 2.

Petitioner additionally identifies *inter partes* review proceedings concerning related patents, stating:

The '766 patent is in the same family as U.S. Patent Nos. 11,659,381 (the '381 patent), 11,234,121 (“the '121 patent”), 8,756,336 (“the '336 patent”), 8,862,757 (“the '757 patent”), 8,898,260 (“the '260 patent”), and 8,904,030 (“the '030 patent”).

TikTok Inc. petitioned for Inter Partes Review of the '381, '121, '766, '336, '757, '260, and '030 patents, and Petitioners are concurrently petitioning for Inter Partes Review of the '121 and '030 patents.

Pet. 114–115. Petitioner also states that the '766 patent is “in the same family as U.S. Pat. No. 9,258,698, which was the subject of IPR2019-00127, IPR2019-00131, IPR2019-01107, and IPR2019-01108.” *Id.* at 115.

C. The '766 Patent

The '766 patent was filed July 3, 2017, as US 15/640,594 (“'594 application”). Ex. 1003 at codes [21], [22]. The '594 application is a

continuation of US 14/576,202 (Ex. 1010,¹ “’202 application”), which is a continuation of five other applications, the earliest of which is US 12/333,303 (“’303 application”), filed December 11, 2008. *Id.* at code [63]. US application 11/901,802, filed September 19, 2007, (published as Exhibit 1010, “’802 application”) was incorporated by reference in the ’594 application. *Id.* at 1:44–49. Provisional application No. 61/017,202 (Ex. 2020, “Provisional application”), was filed on December 28, 2007. *Id.* at code [60].

1. Technical Background

The ’766 patent relates generally to distribution of multi-media content and specifically to “pairing a digital data capture device in conjunction with a mobile device for automatically publishing data and multi-media content on one or more websites simultaneously.” Ex. 1003, 1:52–56. The ’766 patent explains that prior methods require the user to capture an image using a digital camera or a video camera, store the image on a memory device of the digital, and transfer the image off-line to a computing device, such as a personal computer (PC) using a cable such as a universal serial bus (USB) or a memory stick and plug the cable into the PC. *Id.* at 1:59–65. This process is time consuming and inconvenient. *Id.* at 1:65–67.

¹ Exhibits 1010 and 2009 are the same. Unless otherwise stated, we refer to only to Exhibit 1010, understanding that Patent Owner’s papers may cite Exhibit 2009.

2. Method for Automatic Upload of Multimedia Content of the '766 Patent

The '766 patent generally describes “a method and system for utilizing a digital data capture device in conjunction with a Bluetooth (BT) enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.” Ex. 1003, Abs. In this method, upon detecting data on the digital capture device, a “client application” on the BT enabled mobile device “initiates transfer of the captured data, multimedia content, and associated files” and “automatically publishes” it by transferring that data to a website. See id.

Figure 1 of the '766 patent, reproduced below

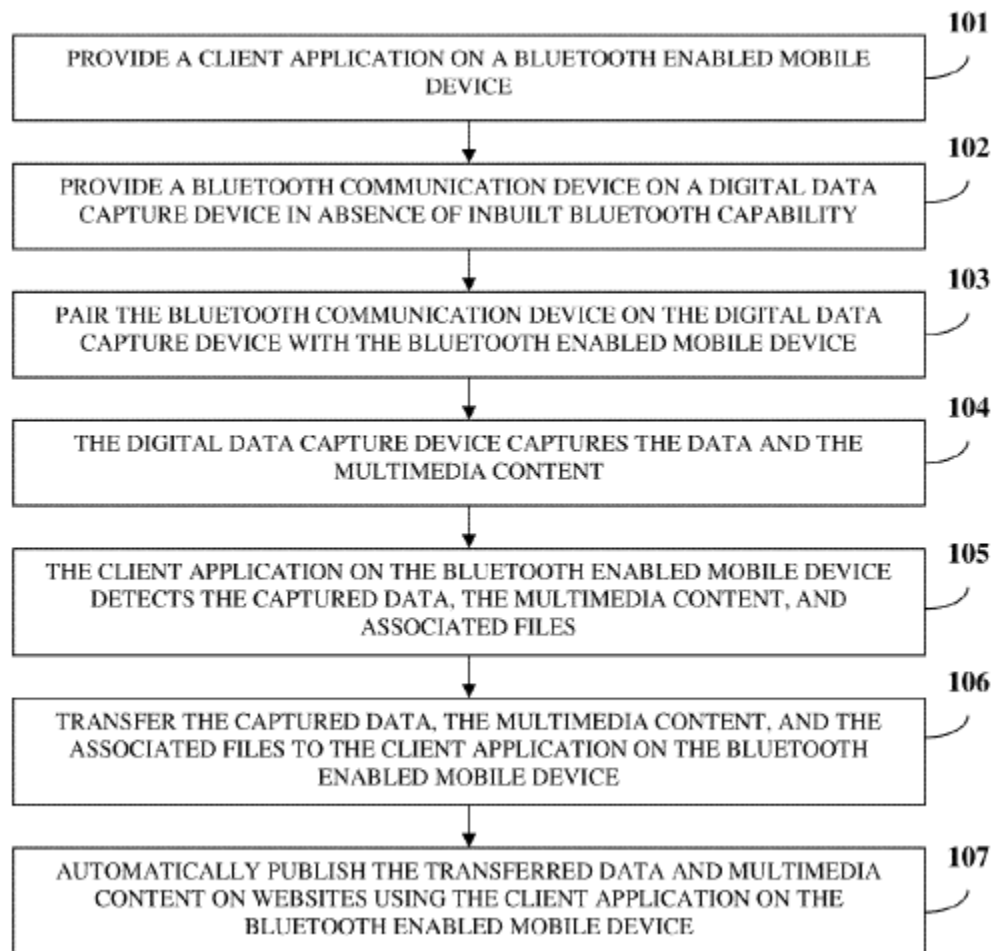


Figure 1 is a flowchart illustrating the method of the '766 patent.

See Ex. 1003, 3:26–30. Figure 1 depicts steps 101–107. Steps 101 and 102 respectively provide a client application on the mobile device and a BT communication device on the capture device. *Id.* at 3:63–67. At step 103, the BT communication device on the capture device is paired with the mobile device “to establish a connection between” the two. *Id.* at 4:13–16. Thereafter, data is captured (step 104), detected by the client application on the mobile device (step 105), and transferred to the client application on the mobile device (step 106) “using one or a combination of file transfer protocols.” *Id.* at 4:47–67. The client application then “automatically publishes” the transferred data on one or more websites (step 107). *Id.* at

5:62–64. According to the Specification, the “transport protocol that is used between the client application . . . and the publishing service [on the website] may be hypertext transfer protocol (HTTP).” *Id.* at 10:40–42.

D. Illustrative Claim

The Petition challenges claims 1–15, of which claims 1, 4, 9, and 13 are independent claims respectively to a “short-range wireless enabled data capture device,” “a system,” a “short-range wireless enabled cellular phone,” and a “system.” Claim 1 is illustrative of the claimed subject matter and reproduced below:

1[P]² A short-range wireless enabled data capture device, comprising:

[1.1] a memory device;

[1.2] a processor coupled to said memory device;

[1.3] a short-range wireless communication device configured to establish a short-range paired wireless connection between the short-range wireless enabled data capture device and a short-range wireless enabled cellular phone,

[1.4] wherein establishing the short-range paired wireless connection comprises cryptographically authenticating identity of the short-range wireless enabled cellular phone, and

[1.5] wherein establishing the short-range paired wireless connection further comprises the short-range wireless enabled data capture device using an association protocol;

[1.6] a data capture circuitry;

² The brackets define limitations of the claim as presented in the Petition. *See* Pet. vi–vii (claim 1). We adopt the format for purposes of this Decision.

[1.7] said processor configured to acquire new-data in the short-range wireless enabled data capture device using the data capture circuitry,

[1.8] wherein the new-data is data acquired after establishing the short-range paired wireless connection between the short-range wireless enabled data capture device and the short-range wireless enabled cellular phone;

[1.9] said processor further configured to store the new-data in the memory device;

[1.10] said processor further configured to create a new-data object, wherein the new-data object comprises:

[1.11] signal to notify, wherein the signal to notify corresponds to the acquiring of the new-data for transfer to the cryptographically authenticated short-range wireless enabled cellular phone;

[1.12] the acquired new-data; and

[1.13] associated new-data, wherein the associated new-data corresponds to data associated with the new-data; and

[1.14] said processor further configured to transfer automatically the new-data object to the cryptographically authenticated short-range wireless enabled cellular phone, over the established short-range paired wireless connection,

[1.15] wherein the cryptographically authenticated short-range wireless enabled cellular phone is configured to listen to the signal to notify and receive the new-data object over the established short-range paired wireless connection,

[1.16.1] wherein a mobile client application for the cryptographically authenticated short-range wireless enabled cellular phone is configured to process the signal to notify and

[1.16.2] store the received new-data in a memory device of the cryptographically authenticated short-range wireless enabled cellular phone,

[1.17] wherein the mobile client application for the cryptographically authenticated short-range wireless enabled cellular phone is configured to use HTTP to upload the received new-data along with user information to a user data publishing website over a cellular data network, and

[1.18] wherein the user information corresponds to a user identifier that uniquely identifies a particular user of the user data publishing website and is used by the user data publishing website to publish the new-data for private consumption.

Pet. v–vi; Ex. 1003, 12:19–13:7.

E. References and Other Evidence

The Petition relies on the following references and declaration:

Singh, et al., US 2009/0172129 A1, published July 2, 2009 (Ex. 1009, “Singh129”³);

Singh, US 2008/0103906 A1, published May 1, 2008 (Ex. 1010, “Singh906”);

Kahn, et al., US 2004/0004737, published Jan. 8, 2004 (Ex. 1017, “Kahn”).

Bluetooth SIG, Inc., *Specification of the Bluetooth System*, (July 26, 2007) (Ex. 1019, “Bluetooth Specification”), IEEE Communications Magazine, *An Overview of the Bluetooth Wireless Technology* (Dec. 2001) (Ex. 1032, “Bluetooth Overview”), collectively “Bluetooth”;

³ Patent Owner references Singh129 and Singh906 as Singh ’129 and Singh ’906 respectively. Unless otherwise stated, we use Petitioner’s designations of Singh129 and Singh906.

Feinberg, et al., US 2007/0073937, published Mar. 29, 2007 (Ex. 1025, “Feinberg”); and
“Declaration of David B. Lett” (Ex. 1030, “Lett Declaration”).

F. Asserted Grounds of Unpatentability

Petitioner asserts the challenged claims are unpatentable on the following grounds:

Grounds	Claims Challenged	35 U.S.C. § ⁴	References
1	1–15	103	Singh 129, Singh 906
2a	1–15	103	Kahn, Bluetooth
2b	1–15	103	Kahn, Bluetooth, Feinberg

Pet. 1–2.

G. Statutory and Regulatory Provisions

Joinder in an *inter partes* review is permitted under § 315(c) as follows:

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

⁴ The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), amended several provisions of 35 U.S.C., including §§ 102, 103. Consistent with our analysis in the 799 IPR, we apply a priority date of July 3, 2017. Our Decision, however, does not depend on which version of § 103 is applied.

the time for filing such a response, determines warrants the institution of an *inter partes* review under section 314.

35 U.S.C. § 315(c).

Regarding timeliness, a petition for an *inter partes* review must be filed no later than “1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent.” 35 U.S.C. § 315(b); *see also* 37 C.F.R.

§ 42.101(b). This one-year time bar, however, does not apply to a request for joinder under § 315(c). *See* 35 U.S.C. § 315(b); 37 C.F.R. § 42.122(b). Instead, “[a]ny request for joinder must be filed . . . no later than one month after the institution date of any *inter partes* review for which joinder is requested.” 37 C.F.R. § 42.122(b).

H. Whether the Petition Warrants Institution

1. The “Reasonable Likelihood” Standard for Instituting Trial

In the 769 IPR, we determined that Petitioner TikTok Inc. (“TikTok”) satisfied the “reasonable likelihood” standard for instituting trial. *See* IPR2024-00769, Paper 8 (“769 IPR Inst. Dec.”) at 15–55.

Here, Petitioner presents substantively identical challenges to claims 1–15 of the ’766 patent based on the same prior art, the same evidence, and the same unpatentability theories as TikTok presents in the 769 IPR. *Compare* Pet. 15–111, *with* IPR2024-00769, Paper 2 (“769 Pet.”) 15–118; *see also* Mot. 5 (asserting that “[t]here are no substantive differences between the LifeScan Petition and the [779] IPR Petition”).

Because Petitioner presents substantively identical challenges to claims 1–15 of the ’766 patent based on the same prior art, evidence, and unpatentability theories in the 769 IPR, Petitioner satisfies the “reasonable

likelihood” standard for instituting trial for the same reasons the “reasonable likelihood” standard for instituting trial was satisfied in the 769 IPR. *See* 769 IPR Inst. Dec. 15–55.

2. Timeliness

As discussed above, “[a]ny request for joinder must be filed . . . no later than one month after the institution date of any *inter partes* review for which joinder is requested.” 37 C.F.R. § 42.122(b). We instituted an *inter partes* review in the 769 IPR on September 30, 2024. *See* 769 IPR Inst. Dec. 1. Petitioner filed the Petition and Motion for Joinder on October 30, 2024. *See* P-TACTS, Filing Date Papers 1 (Pet.), 5 (Mot.). Under 37 C.F.R. § 42.122(b), Petitioner timely filed the Petition and Motion for Joinder.

3. Conclusion Whether the Petition Warrants Institution

Because Petitioner (1) satisfies the “reasonable likelihood” standard for instituting trial; and (2) timely filed the Petition and the Motion for Joinder, the Petition warrants the institution of an *inter partes* review.

I. Whether to Grant Petitioner’s Motion for Joinder

In considering a joinder motion, we consider factors including the reasons joinder is appropriate; whether there are any new grounds of unpatentability asserted in the petition; and whether joinder would impact the trial schedule for the existing review. *See, e.g., Kyocera Corp. v. SoftView LLC*, IPR2013-00004, Paper 15 at 4 (PTAB Apr. 24, 2013).

Here, Petitioner asserts that joinder is appropriate because the Petition “challenges the validity of the same claims of the ’766 patent on identical grounds to those in the [769] IPR,” and “[t]here are no substantive differences between the LifeScan Petition and the [769] IPR Petition.”

Mot. 5. Petitioner’s “supporting materials—including its supporting expert declaration, exhibits, and exhibit numbering—are substantively identical to those presented in the [769] IPR.” *Id.* at 6. As such, Petitioner argues that a joined proceeding would “will not raise any new issues of unpatentability and will not impose any additional burden on the Board or Patent Owner, or add additional complexity to the case. be more efficient and less wasteful, as only a single trial on these common grounds would be required.” *Id.*

If joined to the 769 IPR, Petitioner agrees “to adhere to all applicable deadlines set forth in the [769] IPR Scheduling Order.” *Id.* at 7. Petitioner also stipulates that it “will act as an ‘understudy’ and will not assume an active role unless Petitioner TikTok ceases to participate in the proceeding.” *Id.* a 2. Petitioner agrees that the following conditions will apply “[u]nless and until Petitioner TikTok ceases to participate in the [769] IPR”:

- a) The Joining Petitioners shall not make any substantive filing and shall be bound by the filings of Petitioner TikTok, unless a filing concerns termination and settlement, or issues solely involving the Joining Petitioners;
- b) The Joining Petitioners shall not present any argument or make any presentation at oral hearing unless an issue solely involves the Joining Petitioners, or when addressing Board-approved motions that do not affect Petitioner TikTok, or its respective position;
- c) The Joining Petitioners shall not seek to cross-examine or defend the cross-examination of any witness, unless the topic of cross-examination concerns issues solely involving the Joining Petitioners;
- d) The Joining Petitioners shall not seek discovery from Patent Owner on issues not solely involving the Joining Petitioners;
- e) The Joining Petitioners will not rely on expert testimony

beyond that submitted by Petitioner TikTok unless
Petitioner TikTok is terminated from the case.

Id. at 7–8.

For the reasons stated by Petitioner in the Motion, and in the absence of any opposition by Patent Owner, we agree that Petitioner’s joinder to the 769 IPR is appropriate and will not materially affect the trial schedule for the 769 IPR. *See* Mot. 4–9.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review is instituted based on all grounds asserted in the Petition;

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial commencing on the entry date of this Decision;

FURTHER ORDERED that Petitioner’s Motion for Joinder (Paper 5) is *granted*, and Petitioner is hereby joined as a petitioner in IPR2024-00769;

FURTHER ORDERED that the Scheduling Order entered in IPR2024-00769 (Paper 9), including any schedule changes allowed by the Scheduling Order and agreed by the original parties in that proceeding, shall continue to govern the trial schedule in IPR2024-00769;

FURTHER ORDERED that Petitioner’s role in IPR2024-00769 shall be limited as stated in Petitioner’s Motion for Joinder (Paper 5) unless and until TikTok is terminated from IPR2024-00769;

FURTHER ORDERED that the case caption in IPR2024-00769 shall be changed to reflect joinder of LifeScan, Inc., Senseonics Holdings, Inc.,

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and Ascensia Diabetes Care Holdings AG as petitioners according to the attached example;

FURTHER ORDERED that a copy of this decision be entered into the record of IPR2024-00769; and

FURTHER ORDERED that all further filings shall be made in IPR2024-00769.

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[EXAMPLE CASE CAPTION]

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⁵ LifeScan, Inc., Senseonics Holdings, Inc., and Ascensia Diabetes Care Holdings AG filed a petition and a motion for joinder in IPR2025-00103 and have been joined as petitioners in this proceeding.