**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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AMAZON.COM, INC., AMAZON.COM SERVICES LLC,

Petitioner,

v.

NOKIA TECHNOLOGIES OY,

Patent Owner.

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Case No. IPR2024-00799

U.S. Patent 9,473,602

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# STATEMENT REGARDING MULTIPLE PETITIONS

Petitioner submits this Paper for its Petitions of U.S. Patent No. 9,473,602. Pursuant to the November 2019 Consolidated Trial Practice Guide, Petitioner (1) ranks the Petitions for the Board's consideration, and (2) identifies the differences between the Petitions and the reasons justifying multiple petitions.

## I. Ranking of Petitions

Petitioner requests consideration of the Petitions in the following order:

| Rank | Petition | Prior Art | Claims Challenged |
|---|---|---|---|
| 1 | IPR2024-00798 | U.S. Patent App. Pub. No. 2012/0194997 ("McClure-997"), U.S. Patent App. Pub. No. 2012/0194998 ("McClure-998"), and U.S. Patent App. Pub. No. 2004/0214619 ("Chiang") | 1-36 |
| 2 | IPR2024-00799 | U.S. Patent App. Pub. No. 2003/0222845 ("Nguyen"), U.S. Patent No. 7,515,431 ("Zadesky"), European Patent App. Pub. No. 1,482,733 ("Oda"), and U.S. Patent No. 6,618,044 ("Gettemy") | 1-36 |

## II. Material Differences and Factors Support Multiple Petitions

### A. Material Differences Between the Petitions Based on Different Priority Dates Support Filing of Two Petitions

The Consolidated Trial Practice Guide (Nov. 20, 2019) (page 59) recognizes that multiple petitions may be necessary "when there is a dispute about priority date requiring arguments under multiple prior art references." The Board has repeatedly allowed multiple petitions when they assert different priority dates and references. *Medtronic, Inc. v. Teleflex Innovs. S.A.R.L*, IPR2020-00130, Paper 20

at 11-13 (June 26, 2020); *NRG Energy, Inc. v. Midwest Energy Emissions Corp.*, IPR2020-00832, Paper 17 at 16-18 (Oct. 26, 2020).

That is precisely the situation here. The '602 patent is a continuation that claims priority to an original patent application filed March 29, 2006 (the "Original Application"). The petition in IPR2024-00799 demonstrates invalidity on March 29, 2006, while the petition in IPR2024-00798 relies on an entirely separate set of prior art—without any overlap in references—to demonstrate invalidity as of October 30, 2013 and explains why the claims of the '602 patent are not entitled to an earlier priority date. Two petitions are needed to address Nokia's gamesmanship, as explained below.

The Original Application—and by extension the '602 patent[1]—describes Nokia's attempt, in 2006, to improve on the Motorola RAZR flip phone. Ex-1001, 1:23-35 ("Ultra thin telephone products have emerged in the market …. New flip-phones include the Motorola RAZR, the Motorola V3, the Motorola V3x ….") According to the Original Application, there was a "desire for an architecture for an ultrathin fold product, such as a flip-phone style of mobile telephone, which can maintain aesthetic balance in proportions, and allow added thickness to avoid a 'squeezed' appearance as seen with the RAZR™ mobile telephone." *Id.,* 1:35-40.

[1] The '602 patent shares a specification with the Original Application.

To avoid the "squeezed" appearance of the RAZR, where one half of the phone was thicker than the other half, the Original Application described a flip phone with balanced thickness between the two halves. Ex-1001, Figs. 1-5:

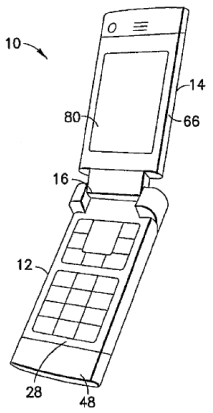


FIG.1

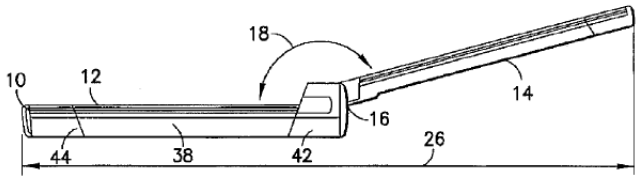


FIG.3

The embodiments of the Original Application described 2006-era feature phones. Consistent with the specification, the claims of the Original Application recited a flip phone with two sections. Ex-1010, 000020-25 (claims 1, 7, 21).

In January 2007, Apple announced the iPhone, which changed the landscape for mobile phone form factors. In 2010, the iPad was announced.

After seeing the success of the iPhone and iPad, Nokia filed a continuation application in 2013 that cited to the Original Application but included new claims modeled after the iPhone/iPad form factor. This eventually led to the '602 patent, which issued in 2016. Armed with these new claims, Nokia embarked on a

worldwide litigation campaign against Apple[2] and other tablet manufacturers, arguing counterfactually that it invented the iPhone and iPad form factors in 2006.

However, the shared specification of the Original Application and '602 patent contains no written description of anything that resembles the iPhone, iPad, or myriad of tablets that Nokia has accused of infringing the '602 patent. This is, of course, expected since the '602 patent was directed to an alleged improvement on the Motorola RAZR form factor and described 2006-era feature phones.

Two petitions are needed to address this misuse of the patent system. Using a 2013 priority date for the challenged claims, IPR2024-00798 features Apple prior art that describes the iPad form factors that Nokia accused of infringement. Since the challenged claims are not entitled to an earlier priority date, they are invalidated by Nokia's prior allegations against the iPad. Thus Nokia will, inevitably, attempt to dispute the priority date. The second petition, in IPR2024-00799, explains why the challenged claims are invalid even if accorded their earliest cited priority date in 2006. Given the strength of the prior art on the merits, the noncumulative nature of the references, and the need to address widely varying priority dates, both petitions should be instituted.

[2] The Apple litigation settled before any substantive rulings.

### B. Two Petitions are Necessary Given the Large Number of Claims

The Consolidated Trial Practice Guide (Nov. 20, 2019) (page 59) recognizes petitioners may be justified in bringing multiple petitions against a single patent "when the patent owner has asserted a large number of claims." The Board has repeatedly found "that about twenty claims constitutes the 'large number' that the CTPG suggests may justify multiple petitions." *Platform Sci., Inc. v. Omnitracs, LLC*, IPR2020-01518, Paper 14 at 17-18 (Apr. 15, 2021); *Samsung Elecs. Co. v. Hardin*, IPR2022-01335, Paper 13 at 22 (Feb. 8, 2023) (finding three petitions reasonable); *ASSA ABLOY AB v. CPC Patent Technologies Pty Ltd.*, IPR2022-01089, Paper 21 at 3-5 (Jan. 3, 2023) (finding two petitions reasonable).

Here, two petitions are necessary because of the large number of challenged claims (36). Even accounting for similar claims, the number of distincitve claim limitations still exceeds twenty. This large number alone justifies multiple petitions. Since Patent Owner has not yet identified the claims it intends to assert in district court, all of the challenged claims therefore remain material to the parties' dispute.

## III. Conclusion

For the foregoing reasons, Petitioner respectfully requests that the Board consider both Petitions and not exercise its discretion to deny institution.

Respectfully submitted,

SHEPPARD, MULLIN,
RICHTER & HAMPTON LLP

*/Harper Batts/*
Harper Batts (Reg. No. 56,160)

Date: July 1, 2024

## CERTIFICATE OF SERVICE

The undersigned certifies that on July 1, 2024, a true and correct copy of the MULTIPLE PETITION STATEMENT was served on the Patent Owner at the following addresses of record via Priority Mail Express®, and was also sent via electronic mail to the attorneys of record for Plaintiff in the concurrent litigation matters as listed below:

Harrington & Smith, Attorneys At Law, LLC
4 Research Drive, Suite 202
Shelton, CT 06484
*Official Correspondence Address*

Brian E. Farnan
bfarnan@farnanlaw.com
Alexandra F. Easley
aeasley@mckoolsmith.com
John D Haynes
john.haynes@alston.com
Joshua Newcomer
jnewcomer@mckoolsmith.com
Kevin Burgess
kburgess@mckoolsmith.com
Michael J. Farnan
mfarnan@farnanlaw.com
Nicholas T. Tsui
nick.tsui@alston.com
R. Mitch Verboncoeur
mverboncoeur@mckoolsmith.com
Shawn P. Gannon
shawn.gannon@alston.com
Stephen R. Lareau
stephen.lareau@alston.com
Theodore Stevenson , III
ted.stevenson@alston.com
Warren H. Lipschitz
wlipschitz@mckoolsmith.com

SHEPPARD, MULLIN,
RICHTER & HAMPTON LLP

*/Harper Batts/*
Harper Batts (Reg. No. 56,160)
Attorney for Petitioner

Date: July 1, 2024

1540 El Camino Real Suite 120
Menlo Park, CA 94025
Tel: (650) 815-2673