

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ZEPP HEALTH CORPORATION,  
Petitioner,

v.

SLYDE ANALYTICS, LLC.,  
Patent Owner.

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IPR2024-00833  
Patent 8,588,033 B2

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**PETITIONER'S REPLY IN SUPPORT OF MOTION FOR JOINDER**

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## I. INTRODUCTION

Petitioner, Zepp Health Corporation (“Zepp” or “Petitioner”), respectfully submits this Reply to Patent Owner’s (Slyde Analytics, “Slyde” or “Patent Owner”) Opposition (“Opp”) to the motion for joinder under 35 U.S.C. § 325(c) and 37 C.F.R. §§ 42.22 and 42.222(b) (“Mot,” Paper No. 8) in an *inter partes* review of U.S. Patent No. 8,588,033 (“the ’033 Patent”).

## II. SLYDE DOES NOT DISPUTE KEY FACTS FAVORING JOINDER

Slyde does not dispute any of the key facts in Zepp’s motion. Likewise, Slyde does not respond to Zepp’s analysis of the joinder factors. *See* Paper 2 (“Mot.”), at 3-7. For example, Slyde does not dispute that Zepp’s petition is substantively identical to that in IPR2024-00006 filed by Samsung or that Zepp’s petition does not propose any new grounds of unpatentability. Nor does Slyde dispute that joinder will not negatively impact the Samsung IPR proceeding or that Zepp agreed to procedures that will simplify briefing and discovery. These factors all favor joinder.

Slyde instead addresses **discretionary** issues under *General Plastic* (Opp. at 1, for example), even though an analysis of those factors is not “particularly persuasive for establishing abuse of the review process for the situation where a different petitioner files a ‘me-too’ or ‘copycat’ petition in conjunction with a timely motion to join.” *Celltrion, Inc. v. Genentech, Inc.*, IPR2018-01019, Paper 11, at 9-11 (Oct.30, 2018). Even if they were relevant, however, which they are not, none of Slyde’s discretionary-based arguments pass muster.

### III. THE GENERAL PLASTICS FACTORS ARE NOT RELEVANT TO THE JOINDER REQUEST IN THIS IPR

Much of Slyde’s opposition to the motion for joinder stems from the application of the factors in *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 (P.T.A.B. Sept. 6, 2017); also citing *Apple Inc. v. Uniloc 2017 LLC*, IPR2020-00854, Paper 9, 5 (P.T.A.B. Oct. 28, 2020) (precedential) (“Uniloc”) (“before determining whether to join . . . even though the Petition is a ‘me-too petition,’ we first determine whether application of the *General Plastic* factors warrants the exercise of discretion to deny the Petition under §314(a).”

However, both of these cases are more than simply a “me-too” request for joinder but instances where the party seeking joinder to an existing IPR had previously petitioned for an IPR separate from the IPR to which joinder was sought. For any number of reasons, the party seeking joinder failed to succeed in their “first attempt” at getting an IPR instituted and were using joinder to take another bite at the apple.

That is not the situation here as Petitioner, Zepp, has not previously sought an IPR for US. Patent no. 8,588,033 and thus the ***discretionary*** issues under *General Plastic* are not applicable. Nonetheless, Zepp address those ***discretionary*** issues under *General Plastic* that support the joinder motion.

#### IV. THE *GENERAL PLASTIC* FACTORS WEIGH IN FAVOR OF INSTITUTION

**General Plastic Factor 1:** As already established, Zepp has not previously filed a petition directed to the same claims of the same patent nor has Zepp filed any petition seeking a challenge of any claims of the patent.

**General Plastic Factors 2, 4, and 5:** Slyde argues that these factors favor denial. Op., Paper No. 8 at pages 4-5. As an initial matter, that knowledge is irrelevant because Zepp did not select any art and is “merely present[ing] the same challenges that previously resulted in institution.” *See Atlassian Corp. v. Express Mobile*, IPR2022-00783, Paper 16, at 10 (Oct. 7, 2022). Moreover, awareness of specific prior art references does not mean awareness of the specific combination and analysis of Samsung’s Petition, which Zepp became aware after Samsung filed their petition for an IPR. Zepp has never therefore filed an IPR withholding prior art; it has only sought to join another party’s existing proceedings. Thus, these factors do not weigh in favor of discretionary denial.

**General Plastic Factor 3:** Slyde suggests factor 3 weighs in favor of discretionary denial because “Petitioner cannot deny that it had Patent Owner’s Preliminary Response in the Samsung IPR at the time it filed the Instant Petition” before filing its copycat joinder petition. Opp. at 5. But factor 3 concerns road-mapping issues, *i.e.*, issues relating to whether a previous preliminary response or institution decision could be leveraged to gain an advantage in a later petition. *Code200, UAB v. Bright Data*, IPR2022-00861, Paper 18, at 4-5 (Aug. 23, 2022), Paper 18, at 5; *see also Expedia, Inc. v. Express Mobile, Inc.*, IPR2022-

00785, Paper 16, at 9 (Sept. 27, 2022). “[R]oad-mapping’ concerns are minimized when, as in this case, a petitioner files a later petition that raises unpatentability challenges substantially overlapping with those in the previously filed petition and the later petition is not refined based on lessons learned from later developments.” *Code200*, IPR2022-00861, Paper 18, at 5. In fact, road-mapping “concerns simply don’t apply in the case of a ‘me too’ Petition like this one, because Petitioner is not trying to leverage an earlier Petitioner for an unfair advantage.” *Expedia*, IPR2022-00785, Paper 16, at 9; *see also* Mot. at 11-12. Thus, factor 3 weighs in favor of institution.

**General Plastic Factors 6 and 7:** As set forth in the Motion, factor 6 weighs in favor of institution. Mot. at 4. The Board has already expended resources on the Samsung IPR proceeding, which supports institution. Slyde does not point to any substantive factors counseling otherwise, and instead simply asserts without basis that the Board’s resources will be impacted. This is specious in view of the outline of why “Joinder would have little, if any, impact on the IPR, the schedule would not be affected, no additional briefing or discovery would be required, and no additional burdens would be placed on any party or the PTAB” as set forth in the motion for joinder. Mot. at 4-7.

*Slyde* asserts in conclusory fashion that there will be “increased complexity” weighing against joinder. Opp. at 6-7.

Instead, however, and as in *Expedia*, it weighs in favor of institution here because Zepp merely seeks to join an ongoing proceeding as an understudy. Mot. at 6. Zepp does not request any schedule changes, and the Board will be able

to timely issue a final written decision. *See Expedia*, IPR2022-00785, Paper 16, at 10.

## **V. CONCLUSION**

For the foregoing reasons, Zepp respectfully requests that its Petition for *inter partes* review of the ‘033 patent be granted and that the proceeding be joined with IPR 2024-00006.

Respectfully submitted,

June 24, 2024

/Daniel J. Pereira/  
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## **CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(a), this is to certify that I caused to be served a true and correct copy of the foregoing PETITIONER'S REPLY IN SUPPORT OF MOTIONFOR JOINDER by overnight courier (Federal Express or UPS), on this 24 day of June 2024, on the Patent Owner at the correspondence address of the Patent Owner as follows:

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