

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD., and
NINTENDO OF AMERICA INC.,
Petitioners

v.

RESONANT SYSTEMS, INC.,
Patent Owner

Case No.: IPR2025-00680
U.S. Patent No. 8,860,337
Issue Date: October 14, 2014

Title: LINEAR VIBRATION MODULES AND LINEAR-RESONANT
VIBRATION MODULES

**SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITIONER'S MOTION FOR JOINDER**

As the Board correctly indicated during its June 3 teleconference (“Conference”), in opposing joinder Resonant seeks to have its cake and eat it too. Resonant’s apparent strategy is to delay the resolution of Petitioners’ Motion for Joinder (“Motion,” Paper 4) until after Resonant can induce Apple, the petitioner in IPR2024-00807 (“Parent Proceeding”), to move to terminate that proceeding. The Board should not countenance Resonant’s gamesmanship. Developments since Petitioners filed their Motion further support their position that joinder would improve efficiency and avoid needless, duplicative litigation.

First, Resonant has forfeited any opposition to joinder by failing to timely file an opposition brief. 37 C.F.R. § 42.45(a)(1). No authority supports Resonant’s attempt to unilaterally extend its deadline. And permitting Resonant to oppose joinder now would prejudice Petitioners because it would either prevent Petitioners from filing the reply brief to which they are entitled, 37 C.F.R. § 42.25(a)(2), or further delay resolution of their Motion.

Second, it has come to light that Resonant is not asserting U.S. Pat. No. 8,860,337 (“the Challenged Patent”) against Apple. That fact weighs in favor of immediate joinder because it increases the likelihood that Apple and Resonant will move to terminate the Parent Proceeding. Indeed, Resonant admitted during the Conference that it has been urging Apple to terminate the Parent Proceeding since February. And Apple was unwilling to confirm the absence of settlement talks with

respect to the Challenged Patent.¹

Third, the progression of the Parent Proceeding since Petitioners' Motion further supports joinder. With Apple having filed its Petitioner's Reply, the only party deadlines remaining in the Parent Proceeding are the Patent Owner Sur-Reply and oral argument. In contrast, if Petitioners were not permitted to join the Parent Proceeding and it was terminated, the parties and the Board would need to start nearly from square one. The Board would need to redetermine the issue of institution, Resonant would need to file another Patent Owner Response, and Petitioners would

¹ Resonant's lack of candor further supports joinder. Resonant IPR filings represented that the Challenged Patent and related patents "are asserted ... against Apple." Parent Proceeding, Paper 15, at 2; *id.*, Paper 4, at 2. Resonant never updated that representation despite having a duty to do so. 37 C.F.R. §§ 42.8(a)(3), 42.11(a). Indeed, at the Conference, Resonant indicated that it has not yet dropped the Challenged Patent from the Apple district court case. In contrast, Resonant represented in the Nintendo district court case that the Challenged Patent "is no longer asserted" against Apple. NINTENDO-1048, at 7-8. Resonant "cannot have it both ways." *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2015-00826, Paper 39, at 6 (imposing sanctions where, as here, a party's failure to update its representations caused prejudice to another party).

need to file a new Petitioner's Reply. That work would need to be doubled in light of Meta's co-pending petition and motion to join. IPR2025-00823, Papers 1 and 3. And the subsequent proceedings would require the Board to decide new issues; as the Motion signaled (at 14), Petitioners intends to file—and rank as #1 in the event of a joinder motion denial—a separate petition including grounds from both the Parent Proceeding and from a related proceeding. IPR2023-00993, Paper 48 (holding unpatentable claims 15 and 16 of the related '830 patent, which are materially identical to the two Challenged Claims here).

If Resonant and Apple were to seek leave to move to terminate, the Board should exercise its authority, as it has done in the past, to manage the proceedings so as to allow Petitioners to join before Apple is terminated. *AT&T Servs., Inc. v. Convergent Media Sols., LLC*, IPR2017-01237, Papers 7 (setting deadlines relating to copycat petitions before motion to terminate parent proceeding), 11, 12 (joining copycat petitioner before terminating parent petitioner); *Sony Mobile Commc'ns AB v. Ancora Techs., Inc.*, IPR2021-00663, Papers 6, 17 (same); *Nintendo of Am., Inc. v. Babbage Holdings, Inc.*, IPR2015-00568, Papers 8, 12 (same); *Mediatek Inc. v. Bandspeed, Inc.*, IPR2015-00314, Papers 20, 21 (terminating parent petitioner but not patent owner so as to keep proceeding pending until copycat petitioner could be joined). Joinder is unlikely to affect the trial schedule but, even if adjustment were necessary, the Board has authority to do so. 37 C.F.R. § 42.5; 35 U.S.C. § 316(a)(11).

Dated: June 9, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby confirms that the foregoing paper was caused to be served on June 9, 2025 via electronic mail, upon the following attorneys of record for the Patent Owner:

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