

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON WEB SERVICES, INC.,
Petitioner,

v.

TOUCHMUSIC ENTERTAINMENT LLC,
Patent Owner.

IPR2026-00047
Patent: US 6,182,128
Issued: January 30, 2001
Application No.: 09/035,194
Filed: March 5, 1995

PETITIONER'S MOTION FOR JOINDER

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I. STATEMENT OF PRECISE RELIEF REQUESTED

Petitioner Amazon Web Services, Inc. (“Petitioner” or “Amazon”) respectfully submits this Motion for Joinder, together with a Petition (the “Amazon Petition”) for *Inter Partes* Review of U.S. Patent No. 6,182,128 (the “’128 patent”), filed contemporaneously herewith. The Board instituted *inter partes* review of claims 1-4, 6, 9-14, and 17 of the ’128 patent in *Apple Inc. v. Ziklag IP LLC*, Case No. IPR2025-00700 (the “Apple IPR”), on September 17, 2025 (Paper 8). Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b), Amazon requests institution of *inter partes* review of claims 1-4, 6, 9-14, and 17 of the ’128 patent and requests joinder with IPR2025-00700.

Amazon timely files this motion within one month of institution of the Apple IPR. The Amazon Petition is substantively identical to Apple’s petition (Paper 2, the “Apple Petition”) in the Apple IPR, and Amazon seeks institution on the same claims, prior art, and grounds for unpatentability that were instituted in the Apple IPR. Therefore, the present petition warrants institution for at least the same reasons that the Board instituted the Apple IPR. In addition, Amazon proposes to streamline discovery and briefing by taking an “understudy” role and not actively participating unless the current petitioner ceases to actively participate in the Apple IPR. In the event the Apple IPR is terminated with respect to the Apple petitioner, only then does Amazon intend to materially participate in the joined proceedings.

Accordingly, the proposed joinder will neither unduly complicate the Apple IPR nor delay its schedule but will promote judicial efficiency in determining the patentability of the '128 patent without prejudice to Patent Owner. Moreover, joinder furthers the interests of justice because—in the event that Apple ceases participating in the Apple IPR—Petitioner would be able to continue this proceeding and thus avoid the district court having to resolve the same unpatentability issues that the Board has already begun analyzing.

Petitioner in the Apple IPR does not oppose Amazon's motion for joinder. Patent Owner Ziklag IP LLC also does not oppose this motion.

II. BACKGROUND AND RELATED PROCEEDINGS

In March 2024, Touchmusic Entertainment LLC (“Touchmusic” or “Patent Owner”) filed three separate complaints in the Northern District of Illinois alleging infringement of the '128 patent: (i) *Touchmusic Entertainment LLC v. Apple Inc.*, Case No. 1:24-cv-01787 (N.D. Il.), filed March 2, 2024; (ii) *Touchmusic Entertainment LLC v. Amazon Web Services, Inc.*, Case No. 1:24-cv-01786 (N.D. Il.), filed March 2, 2024; and (iii) *Touchmusic Entertainment LLC v. Netflix, Inc.*, Case No. 1:24-cv-01789 (N.D. Il.), filed March 3, 2024. All three cases are on appeal: (i) *Touchmusic Entertainment LLC v. Apple Inc.*, Appeal No. 2025-1733 (Fed. Cir.), filed April 25, 2025; (ii) *Ziklag IP LLC v. Amazon Web Services, Inc.*, Appeal No. 2025-1734 (Fed. Cir.), filed April 25, 2025 (consolidated with Appeal

No. 2025-1733); and (iii) *Touchmusic Entertainment LLC v. Netflix, Inc.*, Appeal No. 2025-1960 (Fed. Cir.), filed July 21, 2025.

The Apple IPR petition was filed March 11, 2025.

III. STATEMENT OF REASONS FOR RELIEF REQUESTED

As explained in detail below, Amazon’s motion for joinder should be granted because the motion is timely, and the *Kyocera* factors favor joinder. Joinder is appropriate because: (1) the Amazon Petition is substantively identical to the Apple Petition; (2) the Apple IPR is ongoing with an active petitioner and Amazon is not seeking to replace one petitioner with another; (3) Amazon is willing to assume a silent “understudy” role, only assuming an active role in the event Apple ceases to participate; and (4) joinder would not affect the pending schedule in the Apple IPR nor increase the complexity of that proceeding. Joinder will thus promote the efficient determination of the validity of the ’128 patent in a single IPR proceeding, minimizing costs.

A. Petitioner’s Motion For Joinder Is Timely

The Board may join as a party to an instituted *inter partes* review a person who has properly filed a petition for *inter partes* review that warrants institution. 35 U.S.C. § 315(c). Any 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). The one-year statutory time bar “shall not apply” when a

request for joinder accompanies a petition for *inter partes* review. 35 U.S.C. § 315(b); 37 C.F.R. § 42.122(b).

Amazon's Motion for Joinder is timely because it is made within one month of the September 17, 2025 institution of the Apple IPR. *See* 37 C.F.R. § 42.122(b).

B. The Kyocera Factors Favor Joinder

“A motion for joinder should (1) set forth reasons why joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; (3) explain what impact (if any) joinder would have on the trial schedule for the existing review; and (4) address specifically how briefing and discovery may be simplified.” *Ericsson Inc. v. Uniloc 2017 LLC*, IPR2020-00315, Paper 10 at 5 (PTAB Apr. 7, 2020) (citing *Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper 15 at 4 (PTAB Apr. 24, 2013)).

1. Factor 1: Joinder Is Appropriate

Joinder with the Apple IPR is appropriate because the Amazon Petition involves the same patent, challenges the same claims, and is based on the same grounds and same testimony and other evidence relied upon in the Apple Petition. Additionally, as noted below, the Amazon Petition raises *only* the grounds from the Apple IPR. In short, the Amazon Petition is substantively identical to the Apple Petition. The Amazon Petition copies verbatim the challenges set forth in the Apple Petition and relies on an identical expert declaration. The only differences between

Petitioner's Motion For Joinder

the Amazon Petition and the Apple Petition relate to formalities of a different party filing the petition; there are no other changes to the facts, citations, evidence, or unpatentability arguments introduced in the Apple Petition. The primary differences between the petitions are updates to the Mandatory Notices and the removal of arguments against discretionary denial, which Amazon reserves for any relevant briefing under current procedures. On the merits, the Amazon Petition should therefore be instituted for at least the same reasons that the Board instituted the Apple IPR. Further, good cause exists to allow joinder, given that the Amazon Petition is substantively identical to the Apple Petition, and joinder would allow the Board to effectively resolve the identical challenges raised by both parties in a single proceeding.

Additionally, as noted in Section II, Amazon is currently involved in litigation based on Patent Owner's allegation that Amazon's products infringe the '128 patent, and that case is on appeal (initiated by Patent Owner) after the district court granted Amazon's motion to dismiss. Amazon therefore has a particular interest in the substantial questions of validity surrounding the '128 patent.

Joinder is also appropriate because the invalidity grounds presented can be resolved through Amazon's continued participation in the IPR, even if Apple were to reach a settlement with Patent Owner or otherwise cease participating in the proceeding. The "important public interest in permitting full and free competition in

the use of ideas which are in reality a part of the public domain,” *Lear, Inc. v. Adkins*, 395 U.S. 653, 670 (1969), favors allowing joinder in this case, as joinder would allow Amazon to continue participating in the IPR process if Apple ceases participation.

Finally, joinder is appropriate because the concurrently filed Amazon Petition is Amazon’s first challenge to the ’128 patent. Accordingly, in the instant case there is no “potential for abuse of the review process by repeated attacks on patents.” *Apple Inc. v. Uniloc 2017, LLC*, IPR2020-00854, Paper 9 at 5 (PTAB Oct. 28, 2020) (precedential) (quoting *General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 16–17 (PTAB Sept. 6, 2017) (precedential)). Instead, allowing joinder would enable an efficient and appropriate use of the review process.

2. Factor 2: The Amazon Petition Proposes No New Grounds Of Unpatentability

The Amazon Petition does not present any new grounds or arguments regarding unpatentability, and is substantively identical to the Apple Petition. The Board “routinely grants motions for joinder where the party seeking joinder introduces identical arguments and the same grounds raised in the existing proceeding.” *BlackBerry Corp. v. Uniloc 2017 LLC*, IPR2019-01283, Paper 10 at 8 (PTAB Nov. 5, 2019) (quoting *Samsung Electronics Co., Ltd., v. Raytheon Co.*,

IPR2016-00962, Paper 12 at 9 (PTAB Aug. 24, 2016)) (emphasis added). This factor therefore favors joinder.

**3. Factor 3: Joinder Will Not Unduly Burden Or
Negatively Impact The Apple IPR Trial Schedule**

Joinder will not unduly burden Patent Owner. There are no new issues for Patent Owner to address because the Amazon Petition presents the same grounds and arguments as the Apple Petition. *See Sony Corp. v. Memory Integrity, LLC*, IPR2015-01353, Paper 11 at 6 (PTAB Oct. 15, 2015) (granting motion for joinder and instituting IPR where “joinder should not necessitate any additional briefing or discovery from Patent Owner beyond that already required in [the original IPR]”).

Likewise, joinder will not negatively impact the Apple IPR trial schedule. Amazon expressly consents to the existing Apple IPR trial schedule. Further, as described below, Amazon agrees to take an “understudy” role in the joined proceeding, so long as Apple remains an active party in the joined proceeding. *See, e.g., Apple Inc. v. INVT SPE LLC*, IPR2019-00958, Paper 9 at 6–8 (PTAB May 30, 2019) (granting motion for joinder where the movant presented a substantively identical petition and agreed to take an “understudy” role in the joined proceeding); *Intel Corp. v. Alacritech, Inc.*, IPR2018-01352, Paper 11 at 3–5 (PTAB Jan. 8, 2019) (same).

Finally, the Amazon Petition relies on the same technical expert declaration. Assuming the Apple Petitioner does not terminate their IPR before their expert is deposed, Amazon agrees to rely entirely on, and be bound by, the expert declaration(s) and deposition(s) in the Apple IPR. Therefore, joinder will not increase the complexity of the proceeding and will not affect the Board's ability to complete its review and final decision within the statutory time limits under 35 U.S.C. § 316(a)(11) and 37 C.F.R. § 42.100(c).

**4. Factor 4: Amazon's "Understudy"
Role Will Simplify Briefing And Discovery**

Amazon agrees to take an "understudy" role in the joined proceeding, absent termination of the original petitioner as a party. Specifically, Amazon agrees to the following conditions regarding the joined proceeding, so long as Apple remains an active party in the joined proceeding:

- All filings by Amazon in the joined proceeding shall be consolidated with the filings of Apple unless a filing solely concerns issues that do not involve Apple;
- Amazon shall not be permitted to raise any new grounds not already instituted by the Board in the Apple IPR, or introduce any argument or discovery not already introduced by Apple;

- Amazon shall be bound by any agreement between Patent Owner and Apple concerning discovery and/or depositions; and
- At deposition, Amazon shall not receive any direct examination, cross examination, or redirect time beyond that permitted in this proceeding for Apple alone under either 37 C.F.R. § 42.53 or any agreement between Patent Owner and Apple.

See Ericsson Inc. v. Uniloc 2017 LLC, IPR2020-00315, Paper 10 at 5 (PTAB Apr. 7, 2020) (granting a motion for joinder where the movant proposed the above limitations on its role as understudy); *Apple Inc. v. INVT SPE LLC*, IPR2019-00958, Paper 9 at 7–8 (PTAB May 30, 2019) (same).

Amazon would assume a primary role only if Apple ceased participation in the proceeding. Otherwise, Amazon would remain in its “understudy” role throughout the proceeding. The Board has consistently found that the acceptance of an “understudy” role removes any undue complications or delay that might allegedly result from joinder. *See, e.g., Ericsson Inc. v. Uniloc 2017 LLC*, IPR2020-00315, Paper 10 at 5–6 (granting motion for joinder where the movant agreed to assume “understudy” role and limit participation absent termination of the original petitioner from the joined proceeding); *Apple Inc. v. INVT SPE LLC*, IPR2019-00958, Paper 9 at 6–8 (granting motion for joinder where the movant filed a substantively identical petition and agreed to take an “understudy” role in the joined proceeding); *Intel*

Corp., IPR2018-01352, Paper 11 at 3–5 (same); *Sony Corp.*, IPR2015-01353, Paper 11 at 6–8 (same). As such, this factor also favors joinder.

There is no prejudice to Patent Owner by granting this motion. As noted above, Patent Owner does not oppose this motion. Joinder of Amazon to the existing Apple IPR will not create any additional burden on Patent Owner. Patent Owner need not expend any additional resources above and beyond those required in the Apple IPR.

IV. CONCLUSION

For the reasons provided above, Amazon respectfully requests that the Board (1) institute Amazon’s concurrently filed Petition for *Inter Partes* Review of U.S. Patent No. 6,182,128; and (2) grant joinder of the present proceeding with *Apple Inc. v. Ziklag IP LLC*, Case No. IPR2025-00700.

Respectfully submitted,

Dated: October 10, 2025

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CERTIFICATE OF SERVICE
IN COMPLIANCE WITH 37 C.F.R. § 42.6(e)(4)

The undersigned certifies that the **PETITIONER'S MOTION FOR JOINDER** was served on October 10, 2025, via Express Mail on the Patent Owner at the following address of record as listed on the USPTO Patent Center:

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