

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FIFTH THIRD BANK, NATIONAL ASSOCIATION
Petitioner,

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION,
Patent Owner

***Inter Partes* Review No. IPR2026-00279**
U.S. Patent No. 12,159,310

PETITIONER'S REPLY IN SUPPORT OF JOINDER TO
***INTER PARTES* REVIEW IPR2025-01326**

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I. JOINDER SHOULD BE GRANTED

Fifth Third Bank, National Association (“Fifth Third”) respectfully submits this reply in support of its Motion for Joinder (“Motion,” IPR2026-00279, Paper 3) to the previously-instituted *inter partes* review of U.S. Patent No. 12,159,310, IPR2025-01326 (*Regions Bank v. United Services Automobile Association*, “Regions IPR”). Fifth Third’s Motion and accompanying expert declaration are precisely what the Board has accepted previously—in terms of form, substance, and timing. USAA’s cases do not hold otherwise.

A. Joinder Will Fulfill the Goals of *Inter Partes* Review of Efficient and Timely Review of a Patent Containing Ill-Granted Claims.

The Board found a “reasonable likelihood” that at least one claim of the ’310 Patent is unpatentable. *Regions IPR*, IPR2025-01326, Paper 19 at 2 (P.T.A.B. Feb. 10, 2026). Joining Fifth Third to the instituted Regions IPR will allow this meritorious challenge to proceed to the benefit of the public in the event of the settlement of the Regions IPR. This will also conserve Board resources that otherwise would be required to analyze and decide Fifth Third’s petition. *See Fitbit, Inc. v. Valencell, Inc.*, 964 F.3d 1112, 1115 (Fed. Cir. 2020) (the “statutory purpose” of joinder is “avoiding redundant actions by facilitating consolidation”). Absent joinder, the Board would have to rule again on the same grounds it has previously considered and accepted, but presumably in the face of new arguments by USAA to avoid review of a patent already preliminarily determined to be unsound. This is

inefficient, unfair to the public, and unwarranted where Fifth Third is raising the exact same invalidity arguments that led the Board to institute the Regions IPR.

B. Joinder Is Appropriate *Because* of the Risk of Settlement of the Regions IPR, Not in Spite of It.

USAA argues (at 2) that the “Board routinely denies motions for joinder when the underlying IPR is terminated.” But those are not the facts here: The underlying IPR here has not yet been terminated, and Fifth Third will seek permission from the Board to delay its decision on any requested termination until joinder is decided. Joinder is entirely proper in these circumstances. *See, e.g., T-Mobile USA, Inc. v. Traxcell Techs., LLC*, IPR2022-00669, Paper 13 (P.T.A.B. May 24, 2022).

Neither of USAA’s cases is to the contrary. In *Commscope Inc. v. TQ Delta, LLC*, IPR2022-01443 (Opp. at 2), joinder was found to be inappropriate because the IPR at issue had already been terminated and Commscope was time-barred from filing a petition of its own. Fifth Third’s request to join is precisely so that it can step into the shoes of Regions to continue the challenge to this infirm patent in the event that USAA and Regions settle, to the benefit of the public and the Board as discussed *supra*. That is the very purpose of the joinder statute, 35 U.S.C. § 315(c). And unlike in *Apple Inc. v. Uniloc 2017, LLC*, IPR2020-00854 (Opp. at 2), Fifth Third has not filed repeated challenges to the patent and is not trying through joinder to obtain a second bite through serial petitioning.

Finally, the supposed “policy goal of fostering settlements,” (Opp. at 3), is not

implicated because, according to USAA, it and Regions have already settled. *See* Opp. at 2. USAA does not contend that the settlement depends on whether or not Fifth Third is allowed to join.

C. Fifth Third’s Reliance on Its Own Expert Is Appropriate

USAA lastly argues that joinder should be denied because Fifth Third’s reliance on a different expert than Regions will “complicate and delay the schedule and raise due process concerns.” Opp. at 3. It is wrong on both counts.

USAA is incorrect (at 3-4) that Fifth Third’s expert, Dr. Hart, “provides no opinions of his own on the grounds at issue.” To the contrary, Dr. Hart attested that he conducted a detailed review of the declaration submitted by Regions’ expert, Dr. Lopresti, as well as the references cited therein. He “fully agree[d]” with Dr. Lopresti’s opinions and conclusions, and “adopt[ed]” them as if set forth in his own declaration. *See* IPR2026-00279, Ex. 1078. That is, Dr. Hart does have opinions about the prior art and combinations thereof on which Fifth Third’s petition is based, and he attested to them in declarative form. USAA’s complaint is really that Dr. Hart’s opinions are the same as Dr. Lopresti’s opinions. But as the Board well-knows, a party seeking joinder must raise the same arguments as the original petitioner, including declarations that are “substantively identical.” *See, e.g., Inari Agriculture, Inc. v. Corteva Agriscience LLC*, IPR2024-00181, Paper 8 (P.T.A.B. Mar. 19, 2024). The Board has denied joinder when that was not the case. *See Famy*

Care Ltd. v. Allergan, Inc., IPR2017-00566, Paper 12 (P.T.A.B. July 12, 2017).

The Board has routinely granted joinder where petitioner's expert submitted a short-form declaration incorporating by reference and adopting the exact opinions of another expert. *See, e.g., Gen. Motors LLC v. Neo Wireless, LLC*, IPR2023-00962, Paper 18 (P.T.A.B. Sep. 12, 2024); *Amazon.com Servs. LLC v. Zentian Ltd.*, IPR2023-01192, Paper 10 (P.T.A.B. Jan. 10, 2024); *Ledvance LLC v. CAO Lighting, Inc.*, IPR2023-00123, Paper 19 (P.T.A.B. May 12, 2023); *Atlassian Corp. PLC v. Express Mobile, Inc.*, IPR2022-00783, Paper 16 (P.T.A.B. Oct. 7, 2022).

There are no due process concerns or any other prejudice with this approach. USAA knows what Dr. Hart's opinions are because he adopted them and can depose Dr. Hart on those opinions. *Corning Gilbert* (Opp. at 4) is not to the contrary. There, the Board merely mused about how to handle the situation where a party's expert might be medically unavailable and a substitute declaration might be submitted. *See Corning Gilbert*, IPR2013-00347, Paper 20 at 2 (P.T.A.B. Jan. 2, 2014). The Board's conclusion was not, as USAA suggests (at 4-5), that both experts need to be deposed. Instead, it ordered "the parties to try to reach agreement ... about ... potentially filing of a substitute declaration from another expert witness, to replace that of [the first witness], before contacting the Board with a proposal." *Id.* at 3.

The situation here more closely tracks that in *T-Mobile USA, Inc. v. Traxcell Technologies, LLC*, IPR2022-00669. There, T-Mobile filed a copycat petition with

a short form declaration from its own expert and a motion to join an instituted IPR filed by Apple. The Patent Owner raised the same argument USAA makes here: “Petitioner’s [*T-Mobile*] designated expert, Peter Rysavy ... provides no reasoning or analysis for adopting the opinions of [*Apple’s expert*] Dr. Michael S. Braasch. If the Board grants Petitioner’s Motion for Joinder, Patent Owner will be required to depose both [experts] to fully understand the basis for each experts’ opinions.” *T-Mobile*, IPR2022-00669, Paper 7 at 3 (P.T.A.B. Apr. 4, 2022). The Board rejected that argument and granted joinder, stating: “[A]s a matter of ‘routine discovery,’ Patent Owner may take the deposition of Petitioner’s expert Mr. Rysavy. ... After Apple, Inc. is dismissed ..., the Declaration of Dr. Braasch will no longer be testimony offered by a party, but rather would be evidence relied on by Mr. Rysavy, who may be cross-examined on it during his deposition.” *Id.*, Paper 13 at 35 (May 24, 2022). The same should result here. If Regions is ultimately dismissed, the Declaration of Regions’ expert Dr. Lopresti will no longer be testimony offered by a party, but rather would be evidence relied on by Dr. Hart, who may be cross-examined on it during his deposition. Finally, any delay would come from denial of joinder, requiring a restart of proceedings, not its grant.

II. CONCLUSION

For the foregoing reasons, Fifth Third Bank respectfully requests that the Board grant joinder with the proceeding pending in Regions IPR, IPR2025-01326.

Respectfully submitted,

Date: March 18, 2026
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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. §§ 42.6(e)(1), that a complete copy of the attached Petitioner's Reply in Support of Joinder is being served via electronic mail (by consent), on March 18, 2026, the same day as the filing of the above-identified document in the USPTO with the Patent Trial and Appeal Board, at the below-requested email addresses:

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