

Paper No. \_\_\_\_\_

UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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FUJITSU SEMICONDUCTOR LIMITED and FUJITSU SEMICONDUCTOR  
AMERICA, INC.  
Petitioner

v.

ZOND, INC.  
Patent Owner

Case IPR2014-00866  
U.S. PATENT NO. 6,853,142  
CLAIMS 1, 3-10, 12, 15, 17-20, 42  
Title: Methods and apparatus for generating high-density plasma

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**PETITIONER's MOTION FOR JOINDER UNDER 35 U.S.C. § 315(c)**  
**AND 37 C.F.R. § 42.22 AND § 42.122(b)**

## INTRODUCTION

Fujitsu Semiconductor Limited and Fujitsu Semiconductor America, Inc., (“Fujitsu”) filed the present petition for *inter partes* review **IPR2014-00866** (the “FUJITSU IPR”) and hereby moves for joinder of the FUJITSU IPR with **IPR2014-00494**, filed by Intel Corporation (the “Intel IPR”). The FUJITSU IPR is identical to the Intel IPR in all substantive respects, includes identical exhibits, and relies upon the same expert declarant. Intel Corporation does not oppose this motion.

## BACKGROUND AND RELATED PROCEEDINGS

The FUJITSU IPR and Intel IPR are among a family of *inter partes* review proceedings relating to seven patents that are being asserted by Zond, Inc. (“Zond”) against numerous defendants in the District of Massachusetts: 1:13-cv-11570-RGS (*Zond v. Intel Corp.*); 1:13-cv-11577-DPW (*Zond v. AMD, Inc., et al.*); 1:13-cv-11581-DJC (*Zond v. Toshiba Am. Elec. Comp. Inc.*); 1:13-cv-11625-NMG (*Zond v. Renesas Elec. Corp.*); 1:13-cv-11634-WGY (*Zond v. Fujitsu<sup>1</sup> and TSMC*); and 1:13-cv-11567-DJC (*Zond v. Gillette, Co.*).

In particular, a first complaint in 1:13-cv-11570-RGS (*Zond v. Intel*) was served on defendant Intel Corporation on July 9, 2013, and a first complaint in

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<sup>1</sup> “Fujitsu” as used herein refers to Fujitsu Semiconductor Limited and Fujitsu Semiconductor America, Inc., collectively.

1:13-cv-11634-WGY (*Zond v. Fujitsu and TSMC*) was served on defendants Fujitsu and TSMC on July 9, 2013 and September 5, 2013, respectively. Accordingly, all petitions for inter partes review that have been filed by defendants Intel, TSMC, and Fujitsu are timely as prescribed by 35 U.S.C. § 315(b).

On April 18, 2014, in 1:13-cv-11570-RGS (*Zond v. Intel*), the Court entered an order granting Intel's Motion to Stay pending *inter partes* review, indicating the Court will benefit from the expert claim analysis of the PTO.

On June 2, 2014, as clarified on June 3, 2014, in 1:13-cv-11634-WGY (*Zond v. Fujitsu and TSMC*), the Court entered an order to administratively close the case pending conclusion of *inter partes* reviews or until May 9, 2016, whichever shall occur first.

Currently, the family of *inter partes* review proceedings relating to the seven Zond patents (the "Zond IPRs") consists of the following proceedings that involve Intel, TSMC, and Fujitsu:<sup>2</sup>

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<sup>2</sup> Gillette Co. filed petitions for *inter partes* review of other patents asserted by Zond in 1:13-cv-11567-DJC (*Zond v. Gillette, Co.*), namely IPR2014-00477 and IPR2014-00479 (U.S. Patent No. 8,125,155); IPR2014-00580 and IPR2014-00726 (U.S. Patent No. 6,896,773); and IPR2014-00578 and IPR2014-00604 (U.S. Patent No. 6,896,775). Other Gillette filings are ongoing.

	Intel IPRs		TSMC IPRs		Fujitsu IPRs		Claims
Patent	Intel Ref	Intel Filed	TSMC Ref	TSMC Filed	Fujitsu Ref	Fujitsu Filed	Claims in IPR
6805779	2014-00765	5/16/14	2014-00828	5/28/14	2014-00856	5/30/14	30-37, 39-40
	2014-00820	5/27/14	2014-00829	5/28/14	2014-00859	5/30/14	16, 28, 41, 42, 45, 46
	2014-00598	4/9/14	n/a	n/a	n/a	n/a	1-4, 10-15, 17, 18, 24-27, 29
	2014-00686	4/24/14	n/a	n/a	n/a	n/a	5, 6, 8, 19, 22, 23, 43
	2014-00913	6/6/14	2014-00917	6/9/14	2014-00918	6/9/14	7, 9, 20, 21, 38, 44
6806652	2014-00843	5/29/14	2014-00861	5/30/14	2014-00864	5/30/14	18-34
	2014-00945	6/12/14	n/a	n/a	n/a	n/a	1-17
	2014-00923	6/10/14	n/a	n/a	n/a	n/a	35
6853142	2014-00494	3/13/14	2014-00818	5/27/14	2014-00866	5/30/14	1, 3-10, 12, 15, 17-20, 42
	2014-00495	3/13/14	2014-00821	5/27/14	2014-00863	5/30/14	2, 11, 13, 14, 16
	2014-00496	3/13/14	2014-00819	5/27/14	2014-00867	5/30/14	21, 24, 26-28, 31, 32, 37, 38
	2014-00497	3/13/14	2014-00827	5/28/14	2014-00865	5/30/14	22, 23, 25, 29, 30, 33-36, 39, 43
	2014-00498	3/13/14	n/a	n/a	n/a	n/a	40, 41

	Intel IPRs		TSMC IPRs		Fujitsu IPRs		Claims
Patent	Intel Ref	Intel Filed	TSMC Ref	TSMC Filed	Fujitsu Ref	Fujitsu Filed	Claims in IPR
7147759	2014-00445	3/6/14	2014-00781	5/19/14	2014-00845	5/29/14	20, 21, 34-36, 38, 39, 47, 49
	2014-00446	3/6/14	2014-00782	5/19/14	2014-00850	5/29/14	22-33, 37, 46, 48, 50
	2014-00443	3/6/14	n/a	n/a	n/a	n/a	1, 4, 10-12, 17, 18, 44
	2014-00444	3/6/14	n/a	n/a	n/a	n/a	2, 3, 5-9, 13-16, 19, 41-43, 45
	2014-00447	3/6/14	n/a	n/a	n/a	n/a	40
7604716	2014-00522	3/27/14	2014-00807	5/23/14	2014-00846	5/29/14	14-18, 25-32
	2014-00523	3/27/14	2014-00808	5/23/14	2014-00849	5/29/14	19-24
	2014-00520	3/27/14	n/a	n/a	n/a	n/a	1-11, 33
	2014-00521	3/27/14	n/a	n/a	n/a	n/a	12, 13
7808184	2014-00455	3/7/14	2014-00799	5/22/14	2014-00855	5/30/14	1-5, 11-15
	2014-00456	3/7/14	2014-00803	5/22/14	2014-00858	5/30/14	6-10, 16-20
7811421	2014-00468	3/7/14	2014-00800	5/22/14	2014-00844	5/29/14	1, 2, 8, 10-13, 15-17, 22-25, 27-30, 33, 34, 38, 39, 42, 43, 46-48
	2014-00470	3/7/14	2014-00802	5/22/14	2014-00848	5/29/14	9, 14, 21, 26, 35, 37
	2014-00473	3/7/14	2014-00805	5/23/14	2014-00851	5/30/14	3-7, 18-20, 31, 32, 36, 40, 41, 44, 45

The petitions for IPR filed by TSMC and by Fujitsu correspond exactly to the petitions first filed by Intel against the same patent claims, and are identical to the Intel petitions in all substantive respects. They include identical grounds, analysis, and exhibits and rely upon the same expert declarants and declarations.

In addition to this motion, TSMC and Fujitsu are presently filing motions for joinder of each of their Zond IPR petitions with the corresponding petitions first filed by Intel, subject to the same conditions sought by this motion. Intel does not oppose the TSMC and Fujitsu motions.

In its May 29, 2014 Order (Paper 5) in IPR2014-00781 and IPR2014-00782, the Board articulated that prior authorization for filing a motion for joinder is not required if sought prior to one month after the institution date of any *inter partes* review for which joinder is requested. *See* 37 C.F.R. § 42.422(b). That order resulted from a May 27, 2014 Board conference call initiated by TSMC and attended by Zond and Intel. TSMC advised the Board that multiple Zond IPR petitions were in the process of being filed and sought guidance from the Board on filing of motions for joinder that will minimize the burden on the Board and help streamline the proceedings.

Since the May 29, 2014 Order, petitioners Intel, TSMC, and Fujitsu have completed their filings of the Zond IPR petitions identified above, directed to all seven patents in the District of Massachusetts litigation.

## DISCUSSION

If the Director institutes an *inter partes* review, FUJITSU respectfully requests that the Board exercise its discretion to grant joinder of the FUJITSU IPR and Intel IPR proceedings pursuant to 35 U.S.C. § 315(c), 37 C.F.R. § 42.22, and 37 C.F.R. § 42.122(b). In support of this motion, FUJITSU proposes consolidated filings and other procedural accommodations designed to streamline the proceedings.

### 1. Reasons Why Joinder is Appropriate

Joinder is appropriate in this case because it is the most expedient way to secure the just, speedy, and inexpensive resolution of the related proceedings. *See* 35 U.S.C. § 316(b); 37 C.F.R. § 42.1(b). Intentionally, the FUJITSU IPR is substantively identical to the corresponding Intel IPR in an effort to avoid multiplication of issues before the Board. Given the duplicative nature of these petitions, joinder of the related proceedings is appropriate. Further, FUJITSU will agree to consolidated filings and discovery, and procedural concessions, which Intel does not oppose.

#### a. Substantively Identical Petitions

FUJITSU represents that the FUJITSU IPR is identical to the Intel IPR in all substantive respects. It includes identical grounds, analysis, and exhibits and relies upon the same expert declarant and declaration. Accordingly, if instituted,

maintaining the FUJITSU IPR proceeding separate from that of Intel would entail needless duplication of effort.

b. Consolidated Filings and Discovery

Because the grounds of unpatentability in the FUJITSU IPR and Intel IPR are the same, the case is amenable to consolidated filings. FUJITSU will agree to consolidated filings for all substantive papers in the proceeding (e.g., Reply to the Patent Owner's Response, Opposition to Motion to Amend, Motion for Observation on Cross Examination Testimony of a Reply Witness, Motion to Exclude Evidence, Opposition to Motion to Exclude Evidence and Reply). Specifically, FUJITSU will agree to incorporate its filings with those of Intel in a consolidated filing, subject to the ordinary rules for one party on page limits. Intel and FUJITSU will be jointly responsible for the consolidated filings.

FUJITSU agrees not to be permitted any arguments separate from those advanced by FUJITSU and Intel in the consolidated filings. These limitations avoid lengthy and duplicative briefing.

Consolidated discovery is also appropriate given that FUJITSU and Intel are using the same expert declarant who has submitted the same, identical declaration in the two proceedings. FUJITSU and Intel will designate an attorney to conduct the cross-examination of any given witness produced by Zond and the redirect of any given witness produced by FUJITSU or Intel within the timeframe normally

allotted by the rules for one party. FUJITSU and Intel will not receive any separate cross-examination or redirect time.

2. No New Grounds of Unpatentability

The FUJITSU IPR raises no new grounds of unpatentability from those of the Intel IPR because, in fact, the petitions are identical.

3. No Impact on IPR Trial Schedule

The small difference between the filing date of the FUJITSU IPR and the Intel IPR is without consequence should the proceedings be joined. The trial schedule for the Intel IPR would not need to be delayed to effect joinder based on Zond's preliminary response and later-filed FUJITSU IPR. The joint proceeding would allow the Board and parties to focus on the merits in one consolidated proceeding without unnecessary duplication of effort, and in a timely manner.

4. Briefing and Discovery Will Be Simplified

Joinder will simplify briefing and discovery because FUJITSU seeks an order similar to that issued in *Motorola Mobility LLC v. Softview LLC*, IPR2013-00256 (PTAB June 20, 2013) (Paper 10). As discussed above, FUJITSU and Intel will engage in consolidated filings and discovery, which will simplify the briefing and discovery process.

## 5. No Prejudice to Zond if Proceedings are Joined

FUJITSU proposes joinder to streamline the proceedings and reduce the costs and burdens on the parties. FUJITSU believes joinder will achieve these goals for several reasons. First, joinder will most certainly decrease the number of papers the parties must file, by eliminating a duplicative proceeding. Second, joinder will also reduce by half the time and expense for depositions and other discovery required in separate proceedings. Third, joinder creates case management efficiencies for the Board and parties without any prejudice to Zond.

### PROPOSED ORDER

Petitioner proposes a joinder order for consideration by the Board as follows, which Intel does not oppose:

- If review is instituted on any ground in the Intel IPR, the FUJITSU IPR will be instituted and will be joined with the Intel IPR on the same grounds. Grounds not instituted because the Intel IPR failed to establish a reasonable likelihood of prevailing, if any, will be similarly denied in the FUJITSU IPR.
- The scheduling order for the Intel IPR will apply for the joined proceeding.
- Throughout the proceeding, Intel and FUJITSU will file papers as consolidated filings, except for motions that do not involve the other

party, in accordance with the Board's established rules regarding page limits. So long as they both continue to participate in the merged proceeding, Intel and FUJITSU will identify each such filing as a Consolidated Filing and will be responsible for completing all consolidated filings.

- Intel and FUJITSU will designate an attorney to conduct the cross examination of any given witness produced by Zond and the redirect of any given witness produced by Intel or FUJITSU within the timeframe normally allotted by the rules for one party. Intel and FUJITSU will not receive any separate cross-examination or redirect time.
- Zond will conduct any cross examination of any given witness jointly produced by Intel or FUJITSU and the redirect of any given witness produced by Zond within the timeframe normally allotted by the rules for one cross-examination or redirect examination.

### CONCLUSION

For the foregoing reasons, if the Director institutes *inter partes* review, FUJITSU respectfully requests that the Board grant joinder of the FUJITSU IPR and Intel IPR proceedings.

Respectfully submitted,

Date: June 27, 2014

/David M. O'Dell/

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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 MOTION FOR JOINDER UNDER 35 U.S.C. § 315(c) AND 37 C.F.R. §§ 42.22 AND 42.122(b)" as detailed below:

*Date of service* June 27, 2014

*Manner of service* Email: gonsalves@gonsalveslawfirm.com;  
bbarker@chsblaw.com; kurt@rauschenbach.com

*Documents served* PETITIONER'S MOTION FOR JOINDER UNDER 35  
U.S.C. § 315(c) AND 37 C.F.R. §§ 42.22 AND 42.122(b)

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