Filed on behalf of Innovative Display Technologies LLC
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MERCEDES-BENZ USA, LLC and
MERCEDES-BENZ U.S. INTERNATIONAL, INC.
Petitioners

v.

INNOVATIVE DISPLAY TECHNOLOGIES LLC
Patent Owner

Case IPR2015-00361
U.S. Patent No. 6,755,547

PATENT OWNER'S OPPOSITION TO MOTION FOR JOINDER

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Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450

Patent Owner Innovative Display Technologies ("IDT" or "Patent Owner") hereby files this opposition to the Motion for Joinder ("Motion," Paper No. 3) filed by Mercedes-Benz USA, LLC and Mercedes-Benz U.S. International ("Petitioners"). Patent Owner hereby requests that the Board deny Petitioners' Motion.

I. STATEMENT OF MATERIAL FACTS

1. IDT's patent portfolio is currently subject to 20 IPRs:
    a. IPR2014-01092 (U.S. Patent No. 7,434,974);
    b. IPR2014-01094 (U.S. Patent No. 7,404,660);
    c. IPR2014-01095 (U.S. Patent No. 8,215,816);
    d. IPR2014-01096 (U.S. Patent No. 7,537,370);
    e. IPR2014-01097 (U.S. Patent No. 7,300,194);
    f. IPR2014-01357 (U.S. Patent No. 6,755,547);
    g. IPR2014-01362 (U.S. Patent No. 7,384,177);
    h. IPR2015-00359 (U.S. Patent No. 7,384,177);
    i. IPR2015-00360 (U.S. Patent No. 7,300,194);
    j. IPR2015-00361 (U.S. Patent No. 6,755,547);
    k. IPR2015-00363 (U.S. Patent No. 7,404,660);
    l. IPR2014-00366 (U.S. Patent No. 8,215,816);
    m. IPR2015-00368 (U.S. Patent No. 7,434,974);

n. IPR2015-00487 (U.S. Patent No. 7,404,660);

o. IPR2015-00489 (U.S. Patent No. 7,384,177);

p. IPR2015-00490 (U.S. Patent No. 7,300,194);

q. IPR2015-00493 (U.S. Patent No. 7,537,370);

r. IPR2015-00495 (U.S. Patent No. 7,404,660);

s. IPR2014-00496 (U.S. Patent No. 8,215,816); and

t. IPR2015-00497 (U.S. Patent No. 7,434,974).

2. As seen above, many of those IPRs cover overlapping patents. In fact, the majority of those overlapping IPRs purport to advance identical grounds, the only difference being that different entities filed them. That is the case for the two of the IPRs concerning the patent-at-issue, U.S. Patent 6,755,547 (the "'547 patent"). Those three IPRs are IPR2014-01357 and IPR2015-00361 (the instant IPR). Each of those three IPRs purports to advance identical grounds of invalidity. *See* Motion at 6 ("Petitioners' arguments regarding the asserted references are identical to the arguments LG raised in the LG IPR").

3. LG Display Co., Ltd. filed IPR2014-01357 (the "first IPR") against the '547 patent on August 21, 2014.

4. Petitioner filed IPR2015-00361 (the instant IPR) against the '547 patent on December 4, 2014, seeking to join the first IPR.

5. The Board has yet to reach a decision on the institution on the first IPR.

II. AUTHORITY

The Board has the discretion to join an *inter partes* review under 35 U.S.C. § 315. If joinder is ordered, the Board has discretion to adjust the time period for issuing a final determination in an *inter partes* review. 35 U.S.C. § 316(a)(11); 37 C.F.R. § 42.100(c). The Board determines whether to grant joinder on a case-by-case basis, taking into account the particular facts of each case, substantive and procedural issues, and other considerations. IPR2014-00702, Decision, July 24, 2014, Paper 12 at 3 (citing 157 CONG. REC. S1376 (daily ed. Mar. 8, 2011) (statement of Sen. Kyl)). When exercising its discretion to join IPR proceedings, the Board is mindful that patent trial regulations, including the rules for joinder, must be construed to secure the just, speedy, and inexpensive resolution of every proceeding. *Id.* (citing 35 U.S.C. § 316(b); 37 C.F.R. § 42.1(b)).

The moving party has the burden of proof to establish that it is entitled to the requested relief. 37 C.F.R. §§ 42.20(c), 42.122(b). To determine whether to grant a motion for joinder, the Board considers many factors, including, (1) time and cost considerations, including the impact joinder would have on the trial schedule; and (2) how briefing and discovery may be simplified. IPR2014-00702, Paper 12 at 3.

III. ARGUMENT

Petitioner's Motion states that, "[a] motion for joinder should: (1) set forth the 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." Motion at 5. The Motion does not adequately show that requirements (1), (3), and (4) support joinder, and thus the Motion should be denied.

A. Statutorily, This IPR Cannot Be Joined to the First IPR.

The Board cannot join one IPR to another unless the first IPR is instituted. *See* 35 U.S.C. § 315 ("If the Director institutes an *inter partes* review, the Director, in his or her discretion, may join as a party to that *inter partes* review any person who properly files a petition under section 311 …") (emphasis added). Because the Board has yet to institute the first IPR, this Motion cannot be granted.

B. In the Event that the First IPR is Instituted, the Motion to Join this IPR should be Denied.

Patent Owner does not anticipate that the first IPR will be instituted, but, if it is, the PTAB should nonetheless deny the Motion. However, Petitioner is open to the possibility of joinder if it does not affect the schedule in the first IPR or any IPRs set with concurrent schedules the first IPR. Otherwise, the PTAB should deny the Motion for the reasons set forth below.

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trial schedule for the existing review; and (4) address specifically how briefing and discovery may be simplified." Motion at 5. The Motion does not adequately show that requirements (1), (3), and (4) support joinder, and thus the Motion should be denied.

C. Petitioners' Motion Does not Set Forth Any Independent Reasons Why Joinder is Appropriate.

To meet the first requirement of a motion for joinder, Petitioners simply argue the second and third requirements. First, Petitioners argue that this IPR "does not raise any new grounds of unpatentability over what has been asserted in the LG IPR" and that "Petitioners' arguments regarding the asserted references are identical to the arguments LG raised in the LG IPR." Motion at 5-6. But those reasons alone are not enough for joinder. *See* IPR2014-00702, Paper 12 at 4 ("As an initial matter, we are not persuaded by Unified's argument that, if there are two proceedings with nearly identical petitions, the legislative history provides that joinder should be granted 'as a matter of right.' Mot. 6; Reply 1. As we explained above, Section 315(c) clearly states that we have discretion to join a party. Unified fails to recognize that joinder is not automatic, particularly given the need to complete proceedings in a just, speedy, and inexpensive manner.").

Second, Petitioners argue that joinder is appropriate because the "LG IPR has not yet been instituted, and therefore, no scheduling order has been entered, yet."

Motion at 6. Nevertheless, as discussed in the next section, joinder here would improperly delay the scheduling of the first IPR.

D. Joinder Would Improperly Delay the Trial Schedule in the First IPR.

Delaying the schedule of the first IPR to accommodate joinder would inhibit the Board's mandate "to complete proceedings in a just, speedy, and inexpensive manner." 37 C.F.R. § 42.1(b). As cited above, the Board's interest in completing proceedings in a just, speedy, and inexpensive manner supersedes its interest in joining identical IPRs. *See* IPR2014-00702, Paper 12 at 4 ("we are not persuaded by Unified's argument that, if there are two proceedings with nearly identical petitions, the legislative history provides that joinder should be granted 'as a matter of right.'… Unified fails to recognize that joinder is not automatic, particularly given the need to complete proceedings in a just, speedy, and inexpensive manner.").

Furthermore, it is likely that if instituted the first IPR will have a concurrent and identical schedule set with IPR2014-01359 and IPR2014-01362, which were filed within one day of each other and which involve related patents to the patent-at-issue. Joinder here would likely affect the schedule of IPR2014-01359 and IPR2014-01362, delaying those IPRs too. Thus, joining this proceeding with the first IPR would also affect the Board's ability to complete IPR2014-01359 and IPR2014-01362 in a timely manner. The potential impact of joinder on the schedule of IPR2014-01359 and IPR2014-01362 weighs against joinder. *See* IPR2014-00702,

Paper 12 at 7 ("IPR2014-00057 is not just a single case with no other pending related *inter partes* reviews. Instead, IPR2014-00057 is one of five related *inter partes* reviews between Rackspace and PersonalWeb in which a trial has been instituted. The discovery process and trial schedule for IPR2014-00057 has been coordinated and synchronized with each of the related *inter partes* reviews … Unified, however, does not address adequately the impact of joinder on the other four related *inter partes* reviews, much less present a good cause showing why the pendency for those proceedings should be extended. As such, joining this proceeding with IPR2014-00057 most likely would affect our ability to complete all five proceedings in a timely manner and, as a result, weighs in favor of denying Unified's Motion for Joinder.").

E. Patent Owner Will Likely Seek Additional Discovery in this IPR, which Weighs Further against Joinder.

Patent Owner will seek additional discovery to determine if LG Display Co. Ltd. ("LG") was controlling or funding the filing of this IPR, and thus whether this IPR fails to name real parties-in-interest pursuant to 35 U.S.C. § 315(a)(2) or should be terminated under 35 U.S.C. § 315(d). Patent Owner is aware that LG supplies Petitioners with the very LCDs that are the subject of Patent Owner's lawsuit asserting the '547 patent against Petitioner: *Innovative Display Technologies LLC v. Mercedes-Benz U.S. International, Inc. et al.*, 2:14-cv- 00535-JRG (E.D. Tex., filed June 24, 2014). Furthermore, LG is the Petitioner in the first IPR, which Petitioners

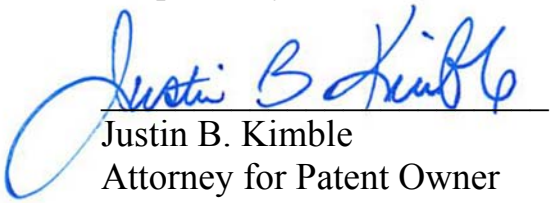
allege is identical to the present IPR. Under these facts, it is likely that LG is an unnamed real party-in-interest to this IPR. The potential for the additional discovery sought to prove LG's involvement in this IPR is beyond that already before the PTAB in IPR2014-01357, and thus weighs against joinder. *See* IPR2014-00702, Paper 12 at 5-6 ("Based on those statements, it is not unreasonable for PersonalWeb to seek authorization for additional discovery in order to determine what companies, if any, fund and control Unified. This potential for additional discovery presents a new substantive issue beyond what is already before us in IPR2014-00057 and, as a result, weighs in favor of denying Unified's Motion for Joinder.").

IV. CONCLUSION

The first IPR has not been instituted and thus the instant IPR cannot be joined to it. Moreover, Petitioners have not met their burden for joinder. To support their Motion for joinder, Petitioners simply argue that the IPRs are identical and that the schedule in the first IPR was not entered yet. Those are not sufficient reasons for joinder if joinder would delay the schedule of the first IPR *and* possibly the schedules of other IPRs. Furthermore, additional discovery would likely be sought in this IPR that is not sought in the first IPR.

Dated: January 23, 2015

Respectfully submitted,



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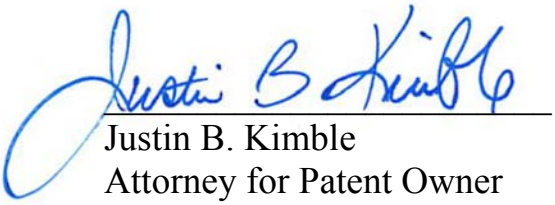
CERTIFICATE OF SERVICE

The undersigned hereby certifies that document has been served via electronic mail on January 23, 2015, to Petitioners at following email addresses pursuant to their consent in its Petition at p. 4: sweingaertner@kslaw.com and nmoffitt@kslaw.com.



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