UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LYFT, INC. AND BUMBLE TRADING LLC,
Petitioner

v.

IKORONGO TECHNOLOGY LLC,
Patent Owner

Case IPR2021-00423
Patent RE45,543

PETITIONER'S MOTION FOR JOINDER

I. STATEMENT OF PRECISE RELIEF REQUESTED

Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b), Lyft Inc. and Bumble Trading LLC ("Petitioner") move for joinder with any *inter partes* review instituted as to U.S. Patent No. RE45,543 ("the '543 Patent") in *Google LLC, v. Ikorongo Technology LLC*, IPR2021-00127 ("the 127 Proceeding"). This motion is timely because it is being filed before institution of the 127 Proceeding. Petitioner requests that action on this motion be held in abeyance until, and the motion be granted only if, an IPR is instituted in the 127 Proceeding.

Petitioner requests institution of the Petition for *inter partes* review filed concurrently herewith. Petitioner's Petition is materially the same as the petition filed in the 127 proceeding. Petitioner's Petition and the petition in the 127 Proceeding challenge the same claims, on the same grounds and rely on the same prior art and evidence, including an identical declaration from the same expert.[1]

Petitioner agrees to proceed solely on the grounds, evidence, and arguments advanced, or that will be advanced, in the 127 Proceeding as instituted. Petitioner's Petition therefore warrants institution under 35 U.S.C. § 314, and 35 U.S.C. § 315(c) permits Petitioner's joinder to any IPR instituted in the 127 Proceeding.

[1] The declaration is an exact duplicate of the declaration in the 127 Proceeding.

Further, upon joining the 127 Proceeding, Petitioner will act as an "understudy" and will not assume an active role unless the current petitioner[2] ceases to participate in the 127 Proceeding. The current petitioner will maintain the lead role in the proceeding so long as at least one of Google/LG/Samsung remains in the proceeding. These limitations will avoid lengthy and duplicative briefing. Petitioner also will not seek additional depositions or deposition time. Petitioner agrees to the foregoing conditions even in the event that other IPRs filed by other, third-party petitioners are joined with the 127 Proceeding. Accordingly, the proposed joinder will neither unduly complicate the 127 Proceeding nor delay its schedule.

In fact, joinder will help efficiently resolve the disputes among the parties. By joinder, a single Board decision may dispose of the issues raised in the 127 Proceeding for all interested parties. Further, joinder will narrow the issues in the co-pending district court actions because LG, Samsung, Lyft, and Bumble have each, contingent upon institution, stipulated to forego raising the grounds of unpatentability in the 127 Proceeding at the district court. Finally, joinder would not complicate or delay the 127 Proceeding, and would not adversely affect any

[2] The current petitioner is Google LLC, filing on behalf of real parties-in-interest LG Electronics and Samsung Electronics. The term "current petitioner" used throughout this Motion refers to all three parties.

schedule set in that proceeding. In sum, joinder would promote efficient adjudication in multiple forums.

Joinder will not unduly prejudice any party. Because joinder will not add any new substantive issues, delay the schedule, burden deponents, or increase needless filings, any additional costs on the Patent Owner would be minimal. On the other hand, denial of joinder *would* prejudice Petitioner. Petitioner's interests may not be adequately protected in the 127 Proceeding, particularly if the current petitioner settles with the Patent Owner. Petitioner should be allowed to join in a proceeding affecting a patent asserted against them.

II. BACKGROUND AND RELATED PROCEEDINGS

Ikorongo Technology LLC is the purported owner of the '543 Patent. The '543 Patent is involved in at least each of the following litigations:

Name	Number	Court	Filed
Ikorongo Texas LLC v. Bumble Trading, LLC.	6:20-cv-00256	W.D. Tex.	Mar. 31, 2020
Ikorongo Texas LLC v. LG Electronics Inc. et al.	6:20-cv-00257	W.D. Tex.	Mar. 31, 2020
Ikorongo Texas LLC v. Lyft, Inc.	6:20-cv-00258	W.D. Tex.	Mar. 31, 2020
Ikorongo Texas LLC v. Samsung Electronics Co., LTD et al.	6:20-cv-00259	W.D. Tex.	Mar. 31, 2020
Ikorongo Texas LLC v. Uber Technologies, Inc.	6:20-cv-00843	W.D. Tex.	Sept. 15, 2020

The '543 patent is also at issue in *Google LLC, v. Ikorongo Technology LLC*, IPR2021-00127 and *Unified Patents, LLC v. Ikorongo Technology LLC*, IPR2020-01379.

III. STATEMENT OF REASONS FOR THE RELIEF REQUESTED

A. Legal Standards and Applicable Rules

The Board has discretion to join a properly filed IPR petition to an existing IPR proceeding. *See* 35 U.S.C. § 315(c); 37 C.F.R. § 42.122(b); *see also Dell Inc. v. Network-1 Sec. Solutions, Inc.*, IPR2013-00385, Paper 19, at 4-6; *Sony Corp. v. Yissum Res. & Dev. Co. of the Hebrew Univ. of Jerusalem*, IPR2013- 00326, Paper 15, at 3-4; *Microsoft Corp. v. Proxyconn, Inc.*, IPR2013-00109, Paper 15, at 3-4. "The Board will determine 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." *Dell*, IPR2013-00385, Paper 19, at 3. The movants bear the burden of proof in establishing entitlement to the requested relief. 37 §§ 42.20(c), 42.122(b). 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.

Dell, IPR2013-00385, Paper 19, at 4.

B. Joinder with the 127 Proceeding Is Appropriate

The Board "routinely grants motions for joinder where the party seeking joinder introduces **identical** arguments and the **same** grounds raised in the existing

proceeding." *Samsung Elecs. Co., Ltd. v. Raytheon Co.*, IPR2016-00962, Paper No. 12 at 9 (Aug. 24, 2016) (emphasis added) (internal quotations and citations omitted). Here, joinder with the 127 Proceeding is appropriate because Petitioner's Petition introduces **identical** unpatentability arguments and the **same** grounds raised in the petition of the 127 Proceeding. In other words, both petitions contain the same grounds based on the same prior art combinations and supporting evidence against the same claims. Indeed, there are no changes to the facts, citations, evidence, or arguments used in demonstrating satisfaction of the implicated claims by the applied prior art. Because these proceedings introduce identical unpatentability arguments and the same grounds, good cause exists for joinder, so that the Board, consistent with 37 C.F.R. § 42.1(b), can efficiently "secure the just, speedy, and inexpensive resolution" of this proceeding and the 127 Proceeding.

Moreover, Petitioner notes that the Board has indicated that the factors outlined by *General Plastics* are not particularly relevant here "where a different petitioner files a 'me-too' or 'copycat' petition in conjunction with a timely motion to join." *See, e.g., Celltrion, Inc. v. Genentech, Inc.*, IPR2018-01019, Paper 11 at 9-11 (PTAB Oct. 30, 2018); *Pfizer, Inc. v Genentech, Inc.*, IPR2017-02063, Paper 25 at 7-8 (PTAB Feb. 21, 2018). And the present facts stand in stark contrast to the recent *Apple Inc. v. Uniloc 2017 LLC* case where the Board denied institution and joinder based on *General Plastic*. *See* IPR2020-00854, Paper 9 (PTAB

"Precedential" Oct. 28, 2020). In that case, the second-in-time petitioner seeking joinder had previously petitioned for, and been denied, *inter partes* review of the same patent. *Id*. at 2. This fact led the Board to reason that if the first-in-time petitioner settled, "it would be as if [the second-in-time petitioner] had brought the [additional] challenge to the patent in the first instance." *Id*. at 4. Not so here. This is Petitioner's first challenge against the '543 Patent at the PTAB, and there is no risk of prejudice or abuse. Rather, through grant of this joinder, the Board is simply offered the opportunity to ensure that the 127 Proceeding is not prematurely terminated based on opportunistic settlement by Patent Owner with fewer than all parties against which it has asserted the subject patent.

C. Joinder Will Not Add Any New Grounds of Unpatentability or Impact the Trial Schedule

The Petition is based on the same grounds and combinations of prior art in the 127 Proceeding. For simplicity and efficiency, Petitioner has copied the substance of the petition in the 127 Proceeding and its accompanying expert declaration. Petitioner does not seek to introduce grounds or claims not currently in the 127 Proceeding and seeks only to join the proceeding as instituted. Patent Owner should not require any discovery beyond that which it may need in the 127 Proceeding—nor should the Board permit any. The present Petition introduces no new substantive issues relative to the 127 Proceeding and does not seek to broaden the scope of the 127 Proceeding.

Joinder will not impact the 127 proceeding trial schedule because the present Petition presents no new issues or grounds of unpatentability. *See LG*, IPR2015-01353, Paper No. 11 at 6 (granting IPR and motion for joinder where "joinder should not necessitate any additional briefing or discovery from Patent Owner beyond that already required in [the original IPR]"). Further, Petitioner explicitly consents to the trial schedule as adopted in the 127 proceeding. There are no new issues for the Board to address, and Patent Owner will not be required to present any additional responses or arguments.

The Patent Owner's Response will also not be negatively impacted because the substantive issues presented in the present Petition are identical to the issues presented in the 127 Proceeding. Patent Owner will not be required to provide any additional analysis or arguments beyond what it will already provide in responding to the petition in the 127 Proceeding. Also, because the present Petition relies on the same expert declaration, only a single deposition is needed for the proposed joined proceeding.

Accordingly, joinder with the 127 Proceeding does not unduly burden or negatively impact the trial schedule.

D. Procedures to Simplify Briefing and Discovery

Petitioner explicitly agrees to take an "understudy" role, which will simplify briefing and discovery. Specifically, Petitioner explicitly agrees, upon joining the

127 proceeding, that the following conditions, as previously approved by the Board in similar circumstances, shall apply so long as the current petitioner remains an active party:

a) all filings by Petitioner in the 127 Proceeding shall be consolidated with the filings of the current petitioner, unless a filing concerns issues solely involving Petitioner;

b) Petitioner shall not be permitted to raise any new grounds not instituted by the Board in the 127 Proceeding, or introduce any argument or discovery not introduced by the current petitioner;

c) Petitioner shall be bound by any agreement between Patent Owner and the current Petitioner concerning discovery and/or depositions; and

d) Petitioner at deposition shall not receive any direct, cross examination or redirect time beyond that permitted under either 37 C.F.R. § 42.53 or any agreement between Patent Owner and the current petitioner.

See Noven Pharmaceuticals, Inc. v. Novartis AG, IPR2014-00550, Paper No. 38 at 5 (Apr. 10, 2015). Unless and until the current petitioner ceases to participate, Petitioner will not assume an active role in the 127 Proceeding.

Thus, by Petitioner accepting an "understudy" role, the parties can comply with the trial schedule assigned to the 127 Proceeding without needing any duplicative efforts by the Board or the Patent Owner. These steps minimize the

possibility of any complication or delay from joinder. *See LG*, IPR2015-01353, Paper No. 11 at 6-7 (granting IPR and motion for joinder because "joinder would increase efficiency by eliminating duplicative filings and discovery, and would reduce costs and burdens on the parties as well as the Board" where petitioners agreed to an "understudy" role). Petitioner is further willing to agree to any other reasonable conditions the Board deems necessary.

IV. CONCLUSION

Joinder will not affect the substance, procedure, or scheduling of the 127 Proceeding. Petitioner files this motion under the statutory joinder provisions as contemplated by the AIA. Joinder will simplify the issues and promote efficiency, justice, and speed.

For the foregoing reasons, Petitioner respectfully requests *inter partes* review of U.S. Patent No. RE45,543 and joinder with *Google LLC, v. Ikorongo Technology LLC*, IPR2021-00127.

Respectfully submitted,

Date: February 12, 2021

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e), the undersigned certifies that on February 12, 2021, a complete and entire copy of this Motion for Joinder was provided via Federal Express, to the to the Patent Owner by serving the correspondence address of record as follows:

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