UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION.

Petitioner

v.

DEMARAY LLC
Patent Owner

Patent No. 7,381,657
IPR2021-01031

Petitioner's Motion for Joinder of IPR2021-00104
Under 35 U.S.C. § 315(c) and 37 C.F.R. §§ 42.22 and 42.122(b)

I. INTRODUCTION

Intel Corporation files the present petition for *inter partes* review IPR2021-01031(the "Intel IPR") and moves for joinder of IPR2021-00104, filed by Applied Materials, Inc. (the "Applied IPR"). The Intel IPR is identical to the Applied IPR in all substantive respects, includes identical exhibits, and relies upon the same expert declarants. Petitioner does not seek to alter the grounds upon which the Board has already instituted the Applied IPR, and seeks no change in the existing schedule for that IPR proceeding. Petitioner respectfully request an opportunity to join with the Applied IPR solely as an "understudy," where Petitioner would only assume an active role in the event Applied Materials settles with Patent Owner Demaray LLC and moves to terminate the Applied IPR.

II. BACKGROUND AND RELATED PROCEEDINGS

Demaray is the owner of U.S. Patent No. 7,381,657 (the "'657 Patent") and has asserted infringement of this patent in the following cases: *Demaray LLC v. Samsung Electronics Co., Ltd.* et al., Case No. 6-20-cv-00636 (W.D. Tex.) ("Samsung Litigation"); *Demaray LLC v. Intel Corporation*, Case No. 6-20-cv-00634 (W.D. Tex.) ("Intel Litigation"); *Applied Materials, Inc. v. Demaray LLC*, Case No. 5-20-cv-05676 (N.D. Cal.) (terminated); *Applied Materials, Inc. v. Demaray LLC*, 5-20-cv-09341 (N.D. Cal). The '657 Patent is also at issue in *Applied*

Materials, Inc. v. Demaray LLC, IPR2021-00106 (PTAB) (institution denied under 314(a)).

On October 23, 2020, Applied Materials filed a Petition requesting an *inter partes* review of claims 1–21 of the '657 Patent. Demaray filed a Preliminary Response to the Petition, Petitioner filed a Reply, and Demaray filed a Sur-reply. The Board instituted the Applied IPR on May 11, 2021.

III. DISCUSSION

Petitioner respectfully requests that the Board exercise its discretion to grant joinder of the Intel IPR and the Applied 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, Petitioner proposes consolidated filings and other procedural accommodations designed to streamline the proceedings.

A. 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 Intel IPR is substantively identical to the corresponding Applied 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, Petitioner will agree to consolidated

filings and discovery, and procedural concessions, which Applied Materials does not oppose.

1. Substantively Identical Petitions

Petitioner represents that the Intel IPR is identical to the Applied IPR in all substantive respects. It includes identical grounds, analysis, and exhibits and relies upon the same expert declarants and declarations. Accordingly, if instituted, maintaining the Intel IPR proceeding separate from that of Applied Materials would entail needless duplication of effort.

2. Consolidated Filings and Discovery

Because the grounds of unpatentability in the Intel IPR and Applied IPR are the same, the case is amenable to consolidated filings. Petitioner 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, Petitioner will agree to incorporate its filings with those of Applied Materials in a consolidated filing, subject to the ordinary rules for one party on page limits. Applied Materials and Petitioner will be jointly responsible for the consolidated filings.

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

Consolidated discovery is also appropriate given that Petitioner and Applied Materials are using the same expert declarants who has submitted the same, identical declarations in the proceedings. Petitioner and Applied Materials will designate an attorney to conduct the cross-examination of any given witness produced by Demaray and the redirect of any given witness produced by Petitioner or Applied Materials within the timeframe normally allotted by the rules for one party. Petitioner will not receive any separate cross-examination or redirect time. Petitioner will agree to the foregoing conditions regarding consolidated filings and discovery even in the event other IPRs filed by other, third-party petitioners are joined with the Applied IPR.

B. No New Grounds Of Patentability

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

C. No Impact On IPR Trial Schedule

The small difference between the filing date of the Intel IPR and the Applied IPR is without consequence should the proceedings be joined. The trial schedule for the Applied IPR would not need to be delayed to effect joinder based on Demaray's

preliminary response and later-filed Intel 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.

D. Briefing And Discovery Will Be Simplified

Joinder will simplify briefing and discovery because Petitioner 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, Petitioner and Applied Materials will engage in consolidated filings and discovery, which will simplify the briefing and discovery process.

E. No Prejudice To Demaray If Proceedings Are Joined

Petitioner proposes joinder to streamline the proceedings and reduce the costs and burdens on the parties. Petitioner 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 Demaray.

IV. PROPOSED ORDER

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

- If review is instituted on any grounds in the Applied IPR, the Intel IPR will be instituted and will be joined with the Applied IPR on the same grounds. Grounds not instituted because the Applied IPR failed to establish a reasonable likelihood of prevailing, if any, will be similarly denied in the Intel IPR.
- The scheduling order for the Applied IPR will apply for the joined proceedings.
- Throughout the proceedings, Applied Materials and Intel will file papers as consolidated filings, except for motions that do not involved the other party, in accordance with the Board's established rules regarding page limits. So long as they both continue to participate in the joined proceedings, Applied Materials and Petitioner will identify each such filing as Consolidated Filing and will be responsible for completing all consolidated filings.
- Applied Materials and Petitioner will designate an attorney to conduct the cross examination of any given witness produced by Demaray and the redirect of any given witness produced by Applied Materials or Petitioner within the timeframe normally allotted by the rules for one party. Petitioner will not receive any separate cross-examination or redirect time.

- Demaray will conduct any cross examination of any given witness jointly produced by Applied Materials or Petitioner and the redirect of any given witness produced by Demaray within the timeframe normally allotted by the rules for one cross-examination or redirect examination.

V. CONCLUSION

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

Respectfully submitted,

Dated: June 4, 2021 By: /David L. Cavanaugh/
David L. Cavanaugh (Reg. No. 36,476)
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2021, I caused a true and correct copy of the foregoing "PETITIONER'S MOTION FOR JOINDER OF IPR2021-00104 UNDER 35 U.S.C. § 315(c) AND 37 C.F.R. §§ 42.22 AND 42.122(b)" to be served via express mail on the Patent Owner at the following correspondence address of record as listed on PAIR:

HAYNES AND BOONE, LLP

IP Section
2323 Victory Avenue
Suite 700
Dallas TX 75219

By: /David L. Cavanaugh/
David L. Cavanaugh (Reg. No. 36,476)