

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner

v.

ERICSSON, INC.,
Patent Owner

Case IPR2016-00108
Patent 6,400,376

PETITIONER'S UNOPPOSED MOTION TO DISMISS PETITION

The Board authorized Petitioner to file an unopposed motion to dismiss the Petition in this and other identified IPR cases on December 28, 2015. Previously, Petitioner met and conferred with Patent Owner, and Patent Owner does not oppose this Motion to Dismiss or otherwise object to Petitioner moving to dismiss the Petition and terminate the above-captioned IPR. Further, all parties agree that Patent Owner will not be prejudiced by the dismissal and that the dismissal will “secure the just, speedy, and inexpensive resolution” to the above-captioned IPR. *See* 37 C.F.R. § 42.1(b). Petitioner hereby moves for dismissal of the pending Petition and termination of the above-captioned IPR.

I. Good Cause Exists To Dismiss The Petition And Terminate The Above-Captioned IPR

Not only is this Motion to Dismiss unopposed, but there are a number of other factors that weigh in favor of dismissing the pending Petition. First, the above-captioned IPR is in its preliminary phase, no preliminary response was filed, and the Board has yet to reach the merits and issue a decision on institution. In similar circumstances involving IPRs in such an early juncture, the Board has previously granted motions to dismiss using its authority under at least 37 C.F.R. §§ 42.5(a) and 42.71(a). *See, e.g., Celltrion, Inc. v. Cenetech, Inc.*, IPR2015-01733, Paper 12, (PTAB. October 6, 2015) (granting unopposed motion to dismiss petition); *Under Armour, Inc. v. Adidas AG*, IPR2015-01531, Paper 8, (PTAB September 21, 2015) (granting unopposed motion to dismiss petition); *Samsung*

Electronics Co. LTD v. Nvidia Corporation, IPR2015-01270, Paper 11 (PTAB December 9, 2015) (dismissing Petition even over the patent owner's objection).

Second, dismissal of the Petition in the above-captioned IPR will preserve the Board's resources and the parties' resources while also epitomizing the Patent Office's policy of "secur[ing] the just, speedy, and inexpensive resolution" to the above-captioned IPR. *See* 37 C.F.R. § 42.1(b). Here, the requested dismissal would relieve the Board of the substantial time and resources required to consider the merits, issue an institution decision, and proceed through trial (if instituted). Likewise, even if Petitioner abandons the above-captioned IPR (regardless of whether this Motion to Dismiss is granted), granting this Motion to Dismiss would relieve the Patent Owner of the substantial expense in preparing responses, presenting expert testimony, and participating in an oral hearing. As such, it would be entirely proper for the Board to dismiss the pending Petition "at this early juncture[]" to promote efficiency and minimize unnecessary costs." *Samsung*, IPR2015-01270, Paper 11 at p. 4.

Lastly, dismissal of the Petition and termination of the above-captioned IPR is a just and fair resolution. Again, all parties here agree that Patent Owner will not be prejudiced by the dismissal. Moreover, the parties and the Board will benefit from preserving of the resources that would otherwise be expended if this Motion is denied.

II. Conclusion

For at least these reasons, Petitioner respectfully requests that the Board grant Petitioner's unopposed motion to dismiss the pending Petition and terminate the above-captioned IPR.

Respectfully submitted,

Date: December 29, 2015

/Michael T. Hawkins/
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Petitioner, Apple Inc.

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(1), the undersigned certifies that on December 29, 2015, a complete and entire copy of the Petitioner's Unopposed Motion to Dismiss Petition was provided via email, to Patent Owner by serving the email correspondence address of record as follows:

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