

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KYOCERA INTERNATIONAL, INC.

Petitioner

v.

WISTARIA TRADING LTD.

Patent Owner

Patent No. 8,930,719

Issue Date: January 6, 2015

Title: DATA PROTECTION METHOD AND DEVICE

Inter Partes Review No. IPR2017-01109

PETITIONER'S UNOPPOSED MOTION TO DISMISS PETITION

Petitioner Kyocera International, Inc. (“Petitioner” or “Kyocera”) sought authorization to file this unopposed Motion to Dismiss the Petition in this and another identified IPR case by directing an email to Mr. Andrew Kellogg on May 3, 2017. Mr. Kellogg responded that this IPR case has not been empaneled but that our May 3, 2017 request would be presented to the Panel upon its appointment. Because we are moving before empanelment of the Panel, and to relieve the need for appointment of any Panel, and the attendant conservation of resources, Petitioner herewith files its Motion to Dismiss.

Previously, Petitioner met and conferred with Patent Owner Wistaria Trading Ltd. (“Patent Owner” or “Wistaria”), and Patent Owner has indicated that it does not oppose this Motion to Dismiss or otherwise object to Petitioner moving to dismiss the Petition and terminate the above-captioned IPR. Further, 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., Apple Inc. v. Telefonaktiebolaget LM Ericsson*, IPR2016-00109, Paper 7 (PTAB Jan. 29, 2016); *Celltrion, Inc. v. Cenetech, Inc.*, IPR2015-01733, Paper 12, (PTAB Oct. 6, 2015) (granting unopposed motion to dismiss petition); *Under Armour, Inc. v. Adidas AG*, IPR2015-01531, Paper 8, (PTAB Sept. 21, 2015) (granting unopposed motion to dismiss petition); *Samsung Electronics Co. LTD v. Nvidia Corporation*, IPR2015-01270, Paper 11 (PTAB Dec. 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, 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. 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 Petition and terminate the above-captioned IPR.

Case IPR2017-01109
U.S. Patent No. 8,930,719

Dated: May 5, 2017

Respectfully submitted,

By: /Nicola A. Pisano/
Nicola A. Pisano
Reg. No. 34,408
Counsel for Petitioner

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