

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AT&T SERVICES, INC.,

Petitioner,

v.

CONVERGENT MEDIA SOLUTIONS LLC,

Patent Owner.

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Patent No. 8,914,840 B2

Title: METHOD AND APPARATUS FOR BROWSING  
USING ALTERNATIVE LINKBASES

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PETITIONER'S MOTION FOR JOINDER TO RELATED *INTER PARTES*  
REVIEW OF U.S. PATENT NO. 8,914,840 (CASE NO. IPR2016-01814)  
UNDER 35 U.S.C. § 315(c) AND 37 C.F.R. § 42.122(b)

## I. STATEMENT OF THE PRECISE RELIEF REQUESTED

AT&T Services, Inc. (“Petitioner”) hereby moves the Patent Trial and Appeal Board (“Board”) for joinder of its today-filed petition for *inter partes* review (“AT&T IPR”) with a previously instituted IPR filed by Netflix, Inc. (Case No. IPR2016-01814, “Netflix IPR”). The AT&T IPR is substantially identical to the Netflix IPR.<sup>1</sup> Both seek *inter partes* review of claims 1-5, 16, 18-20, 24, 32, 34-35, 37-38, 42, 44, 47, 51-56, 59-62 (the “Challenged Claims”) of U.S. Patent No. 8,914,840 (the “’840 patent,” EX1031). Further, the AT&T IPR and Netflix IPR rely upon the same analytical framework (e.g., the same grounds, the same supporting evidence, the same arguments, etc.) in addressing the Challenged Claims. Accordingly, resolving the AT&T IPR and Netflix IPR will necessarily involve considering the same issues by all parties and the Board. Patent Owner will not be prejudiced by joinder, as no new grounds are being raised by AT&T, and no alteration to the Netflix IPR schedule is necessary as a result of AT&T’s joinder.

Petitioner is filing this petition and joinder motion to ensure that a petitioner remains to complete the trial in the event that Netflix reaches a settlement with the Patent Owner or is otherwise terminated from the proceeding. Unless Netflix’s

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<sup>1</sup> To simplify the proceedings, Petitioner adopts the same claim constructions that Netflix proffered in its original Petition.

participation in the proceedings terminates, AT&T does not intend to introduce any briefing, arguments or evidence separate from Netflix in the joined proceedings.

Petitioner has notified counsel for Netflix and Convergent Media Solutions LLC (“Convergent”) regarding the subject of this motion. As of the filing of this motion, counsel for Convergent has not yet indicated whether Convergent will oppose this motion. Counsel for Netflix indicated that Netflix will oppose the motion.

In light of the similarities of the proceedings, the potential benefit to the public and the Board that would accrue by AT&T’s participation in this proceeding in the event that Netflix’s participation terminates, and the lack of prejudice to Patent Owner by AT&T’s joinder, Petitioner respectfully requests that the Board join the Netflix IPR and AT&T IPR.

## **II. BACKGROUND**

Netflix filed a petition requesting *inter partes* review of the ’840 patent on September 15, 2016. Netflix IPR, Paper 2. A decision granting institution of that petition was granted on March 3, 2017. Netflix IPR, Paper 7.

The Netflix IPR and AT&T IPR involve different petitioner groups and real parties-in-interest. *Compare* Netflix IPR, Paper 2 at 1-2 with AT&T IPR, Petition at 2 (identifying real parties-in-interest). However, AT&T is a defendant in infringement lawsuits involving the ’840 Patent filed by the Patent Owner in the

U.S. District Court for the Northern District of Texas. *See* Netflix IPR, Paper 2 at 2; AT&T IPR, Petition at 2 (listing related matters).

### III. LEGAL STANDARD

When more than one petition for *inter partes* review of the same patent is properly filed and those petitions warrant institution, the Board has the authority and discretion to join the proceedings. 35 U.S.C. § 315(c); 37 C.F.R. § 42.122(b). Normally, a petition for *inter partes* review filed more than one year after the petitioner (or the petitioner's real party-in-interest or privy) is served with a complaint alleging infringement of the patent is barred. *See* 35 U.S.C. § 315(b); 37 C.F.R. § 42.101(b). The one-year time bar, however, does not apply to a petition filed with a motion for joinder. *See* 35 U.S.C. § 315(b); 37 C.F.R. § 42.122(b). Joinder of one *inter partes* review with another *inter partes* review is appropriate where it secures the just, speedy, and inexpensive resolution of the *inter partes* review proceedings. *See* 37 C.F.R. § 42.1(b).

A motion for joinder must be filed within one month of institution of any *inter partes* review for which joinder is requested. 37 C.F.R. § 42.122(b); *Taiwan Semiconductor Mfg. Co., Ltd. v. Zond LLC*, IPR2014-00781 and IPR2014-782, Paper 5 at 3 (May 29, 2014) (prior authorization not required before one month deadline). In addition, the Board considers the following factors in deciding whether to grant a motion for joinder: (1) the reasons why joinder is appropriate;

(2) whether the party to be joined has presented any new grounds of unpatentability; (3) what impact, if any, joinder would have on the trial schedule for the existing review; and (4) how briefing and discovery may be simplified. *See, e.g., Hyundai Motor Co. v. Am. Vehicular Scis. LLC*, IPR2014-01543, Paper No. 11 at 3 (Oct. 24, 2014); *Macronix Int'l Co. v. Spansion*, IPR2014-00898, Paper 15 at 4 (Aug. 13, 2014) (quoting *Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper 15 at 4 (April 24, 2013)). Petitioner addresses each of these points below.

#### **IV. ANALYSIS**

As discussed below, this motion is timely and each factor weighs in favor of joinder. Petitioner respectfully requests that the Board grant this motion for joinder pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b) and enter an order to that effect.

##### **A. This Joinder Motion is Timely**

Joinder can be requested without prior authorization no later than one month after the institution date of the proceeding to which joinder is requested. 37 C.F.R. § 42.122(b); *Taiwan Semiconductor*, IPR2014-00781 and IPR2014-782, Paper 5 at 3. Because this motion is being filed within one month of the Board's decision instituting trial in the Netflix IPR, it meets the timeliness requirements of § 42.122(b). *See, e.g., Biotronik, Inc. v. Atlas IP LLC*, IPR2015-00534, Paper 10

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