

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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OHIO FARMERS INSURANCE COMPANY and PREGIS LLC,  
Petitioner,

v.

GUADA TECHNOLOGIES LLC,  
Patent Owner.

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IPR2022-00217  
Patent 7,231,379 B2

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Before MIRIAM L. QUINN, KIMBERLY McGRAW, and  
MATTHEW J. McNEILL, *Administrative Patent Judges*.

McNEILL, *Administrative Patent Judge*.

DECISION  
Granting Institution of *Inter Partes* Review  
35 U.S.C. § 314  
Granting Motion for Joinder  
35 U.S.C. § 315(c); 37 C.F.R. § 42.122

I. INTRODUCTION

A. *Background and Summary*

Ohio Farmers Insurance Company d/b/a Westfield and Pregis LLC  
(collectively “Petitioner”), filed a Petition (Paper 2, “Pet.”) requesting an

IPR2022-00217  
U.S. Patent 7,231,379

*inter partes* review of claims 1–7 of U.S. Patent No. 7,231,379 B2 (Ex. 1001, “the ’379 patent”). On the same day, Petitioner filed a Motion for Joinder with *Elastic N.V. v. Guada Technologies, LLC*, IPR2021-00875 (“the Elastic IPR”). Paper 3 (“Mot.”). Guada Technologies, LLC (“Patent Owner”) did not file a Preliminary Response or an opposition to Petitioner’s Motion for Joinder.

We have authority to determine whether to institute an *inter partes* review. See 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a). Under 35 U.S.C. § 314(a), we may not authorize an *inter partes* review unless the information in the petition and any preliminary response “shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons that follow, we institute an *inter partes* review as to claims 1–7 of the ’379 patent on all grounds of unpatentability asserted in the Petition and grant Petitioner’s Motion for Joinder.

#### *B. Real Parties in Interest*

Petitioner identifies Ohio Farmers Insurance Company d/b/a Westfield, Westfield Insurance Company, Westfield National Insurance Company, and Pregis LLC as the real parties-in-interest. Pet. 10.

#### *C. Related Matters*

Petitioner identifies *Elastic N.V. v. Guada Technologies LLC*, IPR2021-00875 as a related matter. The Elastic IPR Decision on Institution lists other related matters. IPR2021-00875, Paper 7 at 2–3 (“Elastic Dec.”).

#### *D. Evidence*

Petitioner relies on the following prior art:

U.S. Patent No. 6,731,724, issued May 4, 2004, filed June 22, 2001 (Ex. 1004, “Wesemann”);

IPR2022-00217  
U.S. Patent 7,231,379

U.S. Patent No. No. 6,366,910, issued April 2, 2002 (Ex. 1005, “Rajaraman”); and

U.S. Patent No. 7,539,656, issued May 26, 2009, filed March 6, 2001 (Ex. 1006, “Fratkina”).

*E. Prior Art and Asserted Grounds*

Petitioner asserts that claims 1–7 would have been unpatentable on the following grounds:

<b>Claim(s) Challenged</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>
1, 2, 7	§ 103(a)	Wesemann
3–6	§ 103(a)	Wesemann, Rajaraman
1, 2, 7	§ 103(a)	Fratkina
3–6	§ 103(a)	Fratkina, Rajaraman

## II. ANALYSIS

*A. The Elastic Petition*

On May 3, 2021, Elastic N.V. filed a petition requesting an *inter partes* review of claims 1–7 of the ’379 patent. *See* IPR2021-00875, Paper 1 (“Elastic Petition” or “Elastic Pet.”). On October 28, 2021, we instituted an *inter partes* review of claims 1–7 of the ’379 patent in the Elastic IPR. Elastic Dec.

*B. Reasonable Likelihood of the Instant Petition*

Institution of an *inter partes* review is authorized by statute when “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); *see* 37 C.F.R § 42.4(a) (delegating authority to institute trial to the Board). We address whether the Petition in this proceeding reaches the institution threshold before turning to Petitioner’s Motion for Joinder.

The Petition in this proceeding asserts the same grounds of unpatentability as the grounds on which we instituted review in the Elastic IPR. *Compare* Pet. 1, 11–91, *with* Elastic Pet. 1, 12–91; *see also* Elastic Dec. 5–25 (discussing asserted grounds). The Petition relies on an expert declaration that is substantively identical to the expert declaration relied on in the Elastic Petition. *Compare* Ex. 1007 *with* IPR2021-00875, Ex. 1007. Petitioner contends, and we agree, that the Petition and the Elastic Petition “are substantially identical; they contain the same grounds (based on the same prior art combination and supporting evidence) against the same claims.” *See* Mot. 2.

For the reasons set forth in our institution decision in the Elastic IPR, we determine the information presented in the instant Petition shows a reasonable likelihood that Petitioner would prevail in showing claims 1–7 would have been obvious over the asserted references. *See* Elastic Dec. 5–25.

*C. Petitioner’s Motion for Joinder*

We have authority under 35 U.S.C. § 315(c) to join a properly filed *inter partes* review petition to an instituted *inter partes* review. A motion for joinder must be filed “no later than one month after the institution date of any *inter partes* review for which joinder is requested.”

37 C.F.R. § 42.122(b).

The Petition in this proceeding was accorded a filing date of November 22, 2021. Paper 4 (Notice of Filing Date Accorded). Petitioner’s Motion for Joinder was filed the same day. Paper 3. The Elastic IPR was instituted on October 28, 2021. Elastic Dec. 1. Petitioner contends that its Motion for Joinder is timely because joinder was requested no later than one

month after the institution of the Elastic IPR. Mot. 3. We agree that Petitioner's Motion for Joinder is timely.

In its Motion, Petitioner contends that joining this proceeding with the Elastic IPR will allow the Board to "efficiently 'secure the just, speedy, and inexpensive resolution' of the [present] Petition and Elastic IPR in a single proceeding." Mot. 4. (quoting 37 C.F.R. § 42.1(b)).

As noted previously, Petitioner asserts the same unpatentability grounds on which we instituted review in the Elastic IPR. *See* Mot. 4 ("[T]he [present] Petition introduces the same prior art and the same grounds raised in the existing Elastic proceeding."). Petitioner relies on the same prior art analysis and a substantively identical expert declaration as presented in the Elastic Petition. *See* Mot. 4 ("Other than minor differences, such as differences related to the formalities of a different party filing the petition, there are no changes to the facts, citations, evidence, or grounds introduced in the Elastic IPR petition.").

Accordingly, this *inter partes* review does not present any ground or matter not already at issue in the Elastic IPR. Furthermore, if joinder is granted, Petitioner will participate in the proceeding in a limited understudy capacity absent termination of Elastic as a party. Mot. 6–8; Mot. 1 ("if Petitioners join the Elastic IPR, Petitioner will act as an 'understudy' and will not assume an active role unless the current petitioner ceases to participate in the instituted IPR"). Petitioner proposes its understudy role to be the following:

- (a) Petitioners will not make any substantive filings;
- (ii) Petitioners will not present any argument at the oral hearing or make any presentation at the oral hearing for the IPR;

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