

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ORACLE CORPORATION,
Petitioner,

v.

CROSSROADS SYSTEMS, INC.,
Patent Owner.

Case IPR2015-00852
Patent 7,051,147 B2

Before NEIL T. POWELL, KRISTINA M. KALAN, and J. JOHN LEE,
Administrative Patent Judges.

LEE, *Administrative Patent Judge.*

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

Motion for Joinder
37 C.F.R. § 42.122(b)

INTRODUCTION

On March 6, 2015, Oracle Corporation (“Oracle”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1–39 of U.S. Patent No. 7,051,147 B2 (Ex. 1001, “the ’147 patent”). Concurrently with the Petition, Oracle filed a Motion for Joinder (Paper 3, “Mot.”), requesting that this proceeding be joined with *Cisco Systems, Inc. v. Crossroads Systems, Inc.*, Case IPR2014-01544 (“1544 IPR”). Mot. 1. Patent Owner Crossroads Systems, Inc. (“Crossroads”) filed a Preliminary Response (Paper 12, “Prelim. Resp.”) on June 22, 2015. Crossroads did not file an opposition to the Motion for Joinder.

For the reasons discussed below, we institute an *inter partes* review of all challenged claims and grant Oracle’s Motion for Joinder.

INSTITUTION OF *INTER PARTES* REVIEW

In the 1544 IPR, we instituted an *inter partes* review of claims 1–39 of the ’147 patent as allegedly unpatentable over the CRD Manual¹ and the HP Journal² under 35 U.S.C. § 103. 1544 IPR, slip op. at 16 (PTAB Apr. 3, 2015) (Paper 9). The Petition in this proceeding challenges the same claims, asserts an identical ground of unpatentability, and relies on the same

¹ CMD TECHNOLOGY, INC., CRD-5500 SCSI RAID CONTROLLER USER’S MANUAL (Rev. 1.3, 1996) (Ex. 1004, “CRD Manual”).

² HEWLETT-PACKARD JOURNAL, Oct. 1996 (Ex. 1006, “HP Journal”). The HP Journal is a collection of articles dated October 1996. Ex. 1006, 1–3. The portions of the HP Journal relied on by Oracle share a common author, similar subject matter, and the same apparent publication date in the same issue of the journal. In its Preliminary Response, Crossroads does not dispute that one of ordinary skill would have combined the teachings of the different articles in the HP Journal cited by Oracle. Thus, for purposes of this Decision, we refer to these HP Journal articles together.

evidence as presented in the 1544 IPR. Pet. 1; Mot. 1. Oracle represents that the Petition “copies verbatim the challenges set forth in the petition in [the 1544 IPR] and relies upon the same evidence, including the same expert declaration.” Pet. 1 (citation omitted); *see* Mot. 1. In its Preliminary Response, Crossroads does not present any arguments concerning the merits of the ground of unpatentability asserted against the challenged claims.

Instead, Crossroads argues the Petition should be denied under 35 U.S.C. § 325(d). Prelim. Resp. 2–25. Specifically, Crossroads notes that Oracle previously has filed two other petitions seeking *inter partes* review of the same claims challenged in the Petition here. *Id.* at 3–4. According to Crossroads, the present Petition is the product of Oracle’s improper efforts to use the Board’s decision in one of the earlier-filed cases as a guide to address deficiencies in its earlier petition. *Id.* at 11–14 (citing prior Board decisions). Crossroads contends the present Petition represents “nothing more than a ‘second bite at the apple,’” where the only difference compared to earlier petitions “is the presence of additional reasoning to support the assertion of unpatentability over the same prior art.” *Id.* at 10–11 (quoting *Samsung Elecs. Co. v. Rembrandt Wireless Techs., LP*, Case IPR2015-00118, slip op. at 6 (PTAB Jan. 28, 2015) (Paper 14)). Crossroads notes that the Board’s rules must be “construed to secure the just, speedy, and inexpensive resolution of every proceeding,” and asserts that instituting trial on Oracle’s “harassing” Petition in this proceeding would frustrate that purpose. *Id.* at 15–16 (quoting 37 C.F.R. § 42.1(b)). We are not persuaded that denial of the Petition under § 325(d) is warranted.

The facts and circumstances of this case do not support Crossroads’s allegations. Oracle filed earlier petitions in IPR2014-01207 (“1207 IPR”)

and IPR2014-01209 (“1209 IPR”). *Oracle Corp. v. Crossroads Systems, Inc.*, Case IPR2014-01207, Paper 1 (PTAB July 25, 2014) (“1207 IPR Petition”); *Oracle Corp. v. Crossroads Systems, Inc.*, Case IPR2014-01209, Paper 1 (PTAB July 25, 2014) (“1209 IPR Petition”). Cisco Systems, Inc. and Quantum Corporation (“Cisco/Quantum”) filed the 1544 IPR on September 25, 2014. 1544 IPR, Paper 3 (“1544 IPR Petition”). Decisions on institution in the 1207 IPR and the 1209 IPR were issued on February 2, 2015, and January 30, 2015, respectively. 1207 IPR, Paper 12; 1209 IPR, Paper 12. When Oracle filed the present Petition on March 6, 2015, it did not base the Petition on the 1207 IPR Petition or the 1209 IPR Petition, nor did it tailor the present Petition specifically to address issues raised in the institution decisions in those earlier cases. Rather, it copied verbatim the challenges presented in the 1544 IPR Petition, which was filed well before the institution decisions in the 1207 IPR and the 1209 IPR. Mot. 1; Pet. 1.

Moreover, the present case can be distinguished from those cited by Crossroads (*see* Prelim. Resp. 8–12, 16–25) because institution of the present Petition would not subject Crossroads or the ’147 patent to any new challenges. For example, in the *Samsung/Rembrandt* case, the latter-filed petition challenged the same claims for which institution of an *inter partes* review had been denied in a prior case. *Samsung/Rembrandt*, Case IPR2015-00118, Paper 14 at 2; *see also* *ZTE Corp. v. ContentGuard Holdings, Inc.*, Case IPR2013-00454, slip op. at 2 (PTAB Sept. 25, 2013) (Paper 12) (second petition challenging claims for which *inter partes* review was previously denied); *Unilever, Inc. v. Procter & Gamble Co.*, Case IPR2014-00506, slip op. at 2 (PTAB July 7, 2014) (Paper 17) (same); *Butamax Advanced Biofuels LLC v. Gevo, Inc.*, Case IPR2014-00581, slip

op. at 2, 4 (PTAB Oct. 14, 2014) (Paper 8) (same); *CustomPlay, LLC v. ClearPlay, Inc.*, Case IPR2014-00783, slip op. at 2, 6 (PTAB Nov. 7, 2014) (Paper 9) (same); *Zimmer Holdings, Inc. v. Bonutti Skeletal Innovations LLC*, Case IPR2014-01080, slip op. at 2 (PTAB Oct. 31, 2014) (Paper 17) (same). Unlike *Samsung/Rembrandt*, Oracle's present Petition presents only challenges identical to those already instituted in the 1544 IPR, and Oracle further seeks to join this proceeding with the 1544 IPR.³ Thus, instituting an *inter partes* review based on the present Petition, and joining it with the 1544 IPR, would not prevent "the just, speedy, and inexpensive resolution" of either the 1544 IPR or this proceeding.

In addition, differences exist between the arguments and evidence presented in this proceeding and those presented in the 1207 IPR and the 1209 IPR. The sole ground of unpatentability asserted in the present Petition is obviousness over the CRD Manual and the HP Journal. Pet. 9. In addition to those references, the present Petition relies on the Declaration of Andrew Hospodor, Ph.D. *See, e.g.*, Pet. 18–22 (arguing that one of ordinary skill would have been motivated to combine the teachings of the CRD Manual and the HP Journal, citing as supporting evidence Dr. Hospodor's declaration testimony); *see generally* Ex. 1003 (Declaration of Andrew Hospodor, Ph.D.).

Both the 1207 IPR Petition (challenging claims 14–39) and the 1209 IPR Petition (challenging claims 1–13), however, rely on different testimony from a different witness—Professor Jeffrey S. Chase, Ph.D. *See, e.g.*, 1207

³ As discussed further below, Oracle's Motion for Joinder demonstrates that joining this proceeding with the 1544 IPR would cause no delay in the resolution of the 1544 IPR and would not add significantly to the burden on any party, including Crossroads.

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