

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ORACLE CORPORATION,  
Petitioner,

v.

CROSSROADS SYSTEMS, INC.,  
Patent Owner.

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Case IPR2015-00854  
Patent 7,934,041 B2

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

POWELL, *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 1–53 of U.S. Patent No. 7,934,041 B2 (Ex. 1001, “the ’041 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 IPR2014-01463 (“1463 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 1463 IPR, an *inter partes* review of claims 1–53 of the ’041 patent was instituted. 1463 IPR, slip op. at 20 (PTAB Mar. 17, 2015) (Paper 9). Specifically, an *inter partes* review was instituted (1) as to claims 1–14, 16–33, 35–50, and 53 as allegedly being unpatentable over the CRD-5500 Manual<sup>1</sup> and the HP Journal<sup>2</sup>; and (2) as to claims 15, 34, 51, and 52 as

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

<sup>2</sup> 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.

allegedly being unpatentable over the CRD-5500 Manual, the HP Journal, and the Fibre Channel Standard.<sup>3</sup> *Id.* The Petition in this proceeding challenges the same claims, asserts identical grounds of unpatentability, and relies on the same evidence as presented in the 1463 IPR. Pet. 1; Mot. 1. Oracle represents that the Petition “copies verbatim the challenges set forth in the petition in [the 1463 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. 1–26. Specifically, Crossroads notes that the present Petition “is the second of *three* petitions for *inter partes* review filed by [Oracle] against the ’041 Patent.” *Id.* at 1. According to Crossroads, the present Petition is the product of Oracle’s improper efforts to use the Board’s decision in the earlier-filed case, IPR2014-01177 (“1177 IPR”), as a guide to address deficiencies in its earlier petition. *Id.* at 11–15 (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 Oracle’s earlier petition “is the presence of additional reasoning to support the assertion of unpatentability over the same prior art.” *Id.* at 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

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<sup>3</sup> AMERICAN NATIONAL STANDARDS INSTITUTE, INC., FIBRE CHANNEL PHYSICAL AND SIGNALING INTERFACE (FC-PH) X3.230, June 1994 (Ex. 1007, “Fibre Channel Standard”).

inexpensive resolution of every proceeding,” and asserts that instituting trial on Oracle’s 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 and others filed an earlier petition in the 1177 IPR. *Oracle Corp. v. Crossroads Systems, Inc.*, Case IPR2014-01177, Paper 5 (PTAB July 24, 2014) (“1177 IPR Petition”). Cisco Systems, Inc. and Quantum Corporation (“Cisco/Quantum”) filed the 1463 IPR on September 8, 2014. 1463 IPR, Paper 3 (“1463 IPR Petition”). A decision on institution in the 1177 IPR was issued on January 28, 2015. 1177 IPR, Paper 13. When Oracle filed the present Petition on March 6, 2015, it did not base the Petition on the 1177 IPR Petition, nor did it tailor the present Petition specifically to address issues raised in the institution decision in that earlier case. Rather, it copied verbatim the challenges presented in the 1463 IPR Petition, which was filed well before the institution decision in the 1177 IPR. Mot. 1; Pet. 1.

Moreover, the present case can be distinguished from those cited by Crossroads (*see* Prelim. Resp. 8–13, 16–26) because institution of the present Petition would not subject Crossroads or the ’041 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) (declining to institute *inter partes* review on 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 Petition in this case presents only challenges identical to those already instituted in the 1463 IPR, and Oracle further seeks to join this proceeding with the 1463 IPR.<sup>4</sup> Thus, instituting an *inter partes* review based on the present Petition, and joining it with the 1463 IPR, would not prevent "the just, speedy, and inexpensive resolution" of either the 1463 IPR or this proceeding.

In addition, differences exist between the arguments and evidence presented in this proceeding and those presented in the 1177 IPR. The grounds of unpatentability asserted in the present Petition are obviousness of (1) claims 1–14, 16–33, 35–50, and 53 over the CRD-5500 Manual and the HP Journal; and (2) claims 15, 34, 51, and 52 over the CRD-5500 Manual, the HP Journal, and the Fibre Channel Standard. Pet. 7–8. In addition to those references, the present Petition relies on the Declaration of Andrew Hospodor, Ph.D. *See, e.g.*, Pet. 16–20 (arguing that one of ordinary skill would have been motivated to combine the teachings of the CRD-5500

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<sup>4</sup> As discussed further below, Oracle's Motion for Joinder demonstrates that joining this proceeding with the 1463 IPR would cause no delay in the resolution of the 1463 IPR and would not add significantly to the burden on any party, including Crossroads.

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