

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ORACLE CORPORATION,
Petitioner,

v.

CROSSROADS SYSTEMS, INC.,
Patent Owner.

Case IPR2015-01064
Patent 7,051,147 B2

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

LEE, *Administrative Patent Judge*.

DECISION

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

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

INTRODUCTION

On April 17, 2015, Oracle Corporation (“Oracle”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1–13 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 *NetApp, Inc. v. Crossroads Systems, Inc.*, Case IPR2014-00773 (“773 IPR”). Mot. 1. Patent Owner Crossroads Systems, Inc. (“Crossroads”) filed a Preliminary Response (Paper 9, “Prelim. Resp.”) on July 22, 2015. Crossroads did not file an opposition to the Motion for Joinder.

For the reasons discussed below, Oracle’s Motion for Joinder is denied, and the Petition is denied under 35 U.S.C. § 315(b).

DENIAL OF MOTION FOR JOINDER

Oracle requests that the present case be joined with the 773 IPR. Mot. 1. An *inter partes* review may be joined with another *inter partes* review, subject to certain statutory provisions:

(c) Joinder.—If the Director *institutes an inter partes review*, the Director, in his or her discretion, may join as a party to that *inter partes* review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an *inter partes* review under section 314.

35 U.S.C. § 315(c) (emphasis added); *see also* 37 C.F.R. § 42.122.

On September 9, 2015, the Petition in the 773 IPR was denied. 773 IPR, Paper 13. Thus, no *inter partes* review was instituted in the 773 IPR. As a result, the present case cannot be joined with the 773 IPR, and the Motion for Joinder must be denied.

DENIAL OF INSTITUTION OF *INTER PARTES* REVIEW

Under 35 U.S.C. § 315(b), “[a]n inter partes review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent.” Oracle admits in its Motion for Joinder that “Petitioner was served with a complaint asserting infringement of U.S. Patent No. 7,051,147 more than one year before filing the petition in [this proceeding].” Mot. 1.

Although Oracle is correct that the statutory bar in § 315(b) does not apply to a request for joinder, Oracle’s request for joinder is denied as discussed above. Consequently, the present case is not joined, and the Petition is subject to the § 315(b) bar.

ORDER

It is

ORDERED that Oracle’s Motion for Joinder is *denied*; and

FURTHER ORDERED that the Petition is *denied*.

IPR2015-01064
Patent 7,051,147 B2

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