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Paper 9
Entered: October 2, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COX COMMUNICATIONS, INC.,
Petitioner,

v.

C-CATION TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2015-01796
Patent 5,563,883

Before BARBARA A. BENOIT, LYNNE E. PETTIGREW, and MIRIAM L. QUINN, *Administrative Patent Judges*.

PETTIGREW, *Administrative Patent Judge*.

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

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

I. INTRODUCTION

Cox Communications, Inc. ("Petitioner" or "Cox") filed a Petition for *inter partes* review of claims 1, 3, and 4 of U.S. Patent No. 5,563,883 (Ex. 1001, "the '883 patent"). Paper 1 ("Pet."). Concurrently with its Petition, Cox filed a Motion for Joinder with *ARRIS Group, Inc. v. C-Cation Technologies, LLC*, Case IPR2015-00635 ("the ARRIS IPR"). Paper 3 ("Mot."). Cox represents that ARRIS does not oppose the Motion for Joinder. Mot. 1. Patent Owner did not file an opposition to Cox's Motion for Joinder after being given an opportunity to do so. *See* Paper 5. Patent Owner elected to waive a Preliminary Response in view of Cox's Motion for Joinder and the representations made therein, discussed in more detail below. Paper 8.

For the reasons explained below, we institute an *inter partes* review of claims 1, 3, and 4 of the '883 patent and grant Cox's Motion for Joinder.

II. RELATED PROCEEDINGS

The parties indicate that Patent Owner has asserted the '883 patent against Petitioner and other defendants in *C-Cation Technologies, LLC v. Atlantic Broadband Group LLC*, No. 1:15-cv-00295 (D. Del.). Pet. 2; Mot. 2; Paper 7, 1. The parties also indicate that Patent Owner has asserted the '883 patent against ARRIS and other defendants in *C-Cation Technologies, LLC v. Time Warner Cable Inc.*, No. 2:14-cv-00059 (E.D. Tex.). Pet. 2; Mot. 2; Paper 7, 1.

In the ARRIS IPR, we instituted an *inter partes* review of claims 1, 3, and 4 of the '883 patent. *ARRIS Group, Inc. v. C-Cation Techs., LLC*, Case IPR2015-00635 (PTAB July 31, 2015) (Paper 19) ("ARRIS Dec."). Another petition challenging the '883 patent, along with a motion for joinder with the

ARRIS IPR, is pending. *See Unified Patents Inc. v. C-Cation Techs., LLC*, Case IPR2015-01045 (Papers 2, 11). In addition, the '883 patent has been the subject of two other petitions for *inter partes* review. In *Cisco Systems, Inc. v. C-Cation Technologies, LLC*, Case IPR2014-00454 (PTAB Aug. 29, 2014) (Paper 12), the Board denied institution of *inter partes* review. In *ARRIS Group, Inc. v. C-Cation Technologies, LLC*, Case IPR2014-00746 (PTAB Nov. 24, 2014) (Paper 22), the Board instituted *inter partes* review, and subsequently granted Patent Owner's request for adverse judgment (Paper 28).

III. INSTITUTION OF *INTER PARTES* REVIEW

In the ARRIS IPR, we instituted an *inter partes* review on the only grounds asserted in ARRIS's petition: (a) claims 1 and 4 under 35 U.S.C. § 103(a) as obvious over MPT 1343,[1] MPT 1347,[2] and MPT 1327,[3] and (b) claim 3 under 35 U.S.C. § 103(a) as obvious over MPT 1343, MPT 1347, MPT 1327, Zdunek,[4] and Dufresne.[5] ARRIS Dec. 23. The Petition filed in this proceeding is nearly identical to the petition filed in the ARRIS IPR and asserts the same grounds on which we instituted review in

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[1] MPT 1343 PERFORMANCE SPECIFICATION: SYSTEM INTERFACE SPECIFICATION FOR RADIO UNITS TO BE USED WITH COMMERCIAL TRUNKED NETWORKS OPERATING IN BAND III SUB-BANDS 1 AND 2 (1991) (Ex. 1006, "MPT 1343").

[2] MPT 1347 RADIO INTERFACE SPECIFICATION FOR COMMERCIAL TRUNKED NETWORKS OPERATION IN BAND III, SUB-BANDS 1 AND 2 (1991) (Ex. 1007, "MPT 1347").

[3] MPT 1327 A SIGNALLING STANDARD FOR TRUNKED PRIVATE LAND MOBILE RADIO SYSTEMS (1991) (Ex. 1005, "MPT 1327").

[4] U.S. Patent No. 4,870,408, issued Sept. 26, 1989 (Ex. 1008, "Zdunek").

[5] U.S. Patent No. 4,920,533, issued Apr. 24, 1990 (Ex. 1009, "Dufresne").

the ARRIS IPR. Pet. 5–6; Mot. 1. For the same reasons set forth in our institution decision in the ARRIS IPR, we determine that the information presented in Cox's Petition shows a reasonable likelihood that Petitioner would prevail in showing that claims 1, 3, and 4 of the '883 patent are unpatentable. *See* ARRIS Dec. 13–21. Accordingly, we institute an *inter partes* review on the same grounds as those on which we instituted review in the ARRIS IPR.

IV. GRANT OF MOTION FOR JOINDER

The Petition and Motion for Joinder in this proceeding were accorded a filing date of August 24, 2015. *See* Paper 4. Thus, Petitioner's Motion for Joinder is timely because joinder was requested no later than one month after the institution date of the ARRIS IPR, i.e, July 31, 2015. *See* 37 C.F.R. § 42.122(b).

The statutory provision governing joinder in *inter partes* review proceedings is 35 U.S.C. § 315(c), which reads:

> 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.

A motion for joinder should (1) set forth reasons why joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; (3) explain what impact (if any) joinder would have on the trial schedule for the existing review; and (4) address specifically how briefing and discovery may be simplified. *See Kyocera Corp. v. Softview LLC*, Case IPR2013-00004, slip op. at 4 (PTAB Apr. 24, 2013) (Paper 15).

As noted, the Petition in this case asserts the same invalidity grounds and presents the same arguments as the petition in the ARRIS IPR. *See* Mot. 6. Cox also has retained the same expert as ARRIS and submitted a declaration in this proceeding that is virtually the same as the declaration submitted by ARRIS in the ARRIS IPR. *See id.* Thus, this *inter partes* review does not present any ground or matter not already at issue in the ARRIS IPR.

If joinder is granted, Cox agrees to let ARRIS take the lead in all matters, adopting an "understudy" role as long as ARRIS remains an active participant in the *inter partes* review. *Id.* at 7–8. Cox agrees to work with ARRIS to submit consolidated filings, except for motions that do not involve the other party. *Id.* at 7. Cox also represents that it will rely on ARRIS to take testimony and defend depositions of all witnesses, unless ARRIS wishes otherwise. *Id.* Finally, Cox states it "is willing to agree to any other procedural concessions that will minimize complication or delay and result in a speedy trial with little or no impact on the ARRIS IPR or the Board." *Id.* In view of its agreement to consolidated filings and subordination, Cox submits that joinder will not impact the trial schedule for the ARRIS IPR. *Id.* at 8.

We agree with Petitioner that joinder with the ARRIS IPR is appropriate under the circumstances. Accordingly, we *grant* Petitioner's Motion for Joinder.

V. ORDER

Accordingly, it is:

ORDERED that an *inter partes* review is instituted in IPR2015-01796;

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