

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARRIS GROUP, INC.,
Petitioner,

v.

TQ DELTA, LLC,
Patent Owner.

Case IPR2017-00422
Patent 8,432,956 B2

Before SALLY C. MEDLEY, KALYAN K. DESHPANDE, and TREVOR
M. JEFFERSON, *Administrative Patent Judges*.

JEFFERSON, *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

ARRIS Group, Inc. (“Petitioner”), filed a Petition (Paper 1, “Pet.”) for *inter partes* review of claims 1–10 of U.S. Patent No. 8,432,956 B2 (Ex. 1001, “the ’956 patent”). Concurrently with its Petition, Petitioner filed a Motion for Joinder with *Cisco Systems, Inc. v. TQ Delta, LLC*, Case IPR2016-01007 (“the Cisco IPR”). Paper 3 (“Mot.”). Petitioner represents that the petitioner in the Cisco IPR, Cisco Systems, Inc. (“Cisco”), does not oppose the Motion for Joinder. Mot. 1. TQ Delta, LLC (“Patent Owner”) submits that it does not oppose joinder and waives its Preliminary Response. Paper 8.

After considering the Petition, Motion for Joinder, and Patent Owner’s statement, we institute *inter partes* review of claims 1–10 of the ’956 patent and grant Petitioner’s Motion for Joinder.

A. Related Proceedings

Petitioner identifies several pending matters related to the ’956 patent, including *TQ Delta LLC v. Comcast Cable Commc’ns LLC*, Case No. 1:15-cv-00611-RGA (D. Del.); *TQ Delta LLC v. CoxCom LLC et al.*, Case No. 1:15-cv-00612-RGA (D. Del.); *TQ Delta LLC v. DirecTV LLC*, Case No. 1:15-cv-00613-RGA (D. Del.); *TQ Delta LLC v. DISH Network Corp. et al.*, Case No. 1:15-cv-00614-RGA (D. Del.); *TQ Delta LLC v. Time Warner Cable Inc., et al.*, Case No. 1:15-cv-00615-RGA (D. Del.); *TQ Delta LLC v. Verizon Servs. Corp.*, Case No. 1:15-cv-00616-RGA (D. Del.); *TQ Delta LLC v. 2Wire, Inc.*, Case No. 13-cv-1835-RGA (D. Del.); *TQ Delta LLC v. Zhong Techs., Inc.*, Case No. 13-cv-1836-RGA (D. Del.); *TQ Delta LLC v. ZyXEL Commc’ns, Inc. and ZyXEL Commc’ns Corp.*, Case No. 13-cv-02013-RGA (D. Del.); *TQ Delta LLC v. ADTRAN, Inc.*, Case No. 1:14-cv-

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00954-RGA (D. Del.); *ADTRAN, Inc. v. TQ Delta LLC*, 15-cv-00121-RGA (D. Del.); *Arris Group, Inc. v. TQ Delta, LLC*, IPR2016-00428; *Arris Group, Inc. v. TQ Delta, LLC*, IPR2016-00429; and *Arris Group, Inc. v. TQ Delta, LLC*, IPR2016-00430. Pet. 1–2; Mot. 2–3; Paper 6, 2–5.

B. The Cisco IPR

In the Cisco IPR, we instituted *inter partes* review on the grounds that claims 1–10 of the '956 patent are unpatentable under 35 U.S.C. § 103(a) over Milbrandt,¹ Hwang,² and ANSI T1.413.³ *Cisco Systems, Inc. v. TQ Delta, LLC*, Case IPR2016-01007, slip op. at 23 (PTAB Nov. 4, 2016) (Paper 8) (“Cisco Dec.”).

II. INSTITUTION OF *INTER PARTES* REVIEW

The Petition in this proceeding asserts the same ground of unpatentability as the one on which we instituted review in the Cisco IPR. *Compare* Pet. 8–51 *with* Cisco Dec. 23. Indeed, Petitioner contends that the Petition asserts the lone ground that the Board instituted in the Cisco IPR, there are no new arguments for the Board to consider, and the Petitioner relies on the same exhibits and expert declaration as in the Cisco IPR. Mot. 6.

¹ U.S. Patent No. 6,636,603 B1; issued Oct. 21, 2003 (Ex. 1011) (“Milbrandt”).

² U.S. Patent No. 6,590,893 B1; issued July 8, 2003 (Ex. 1013) (“Hwang”).

³ AMERICAN NATIONAL STANDARDS INSTITUTE, *for Telecommunications – Network and Customer Installation Interfaces – Asymmetric Digital Subscriber Line (ADSL) Metallic Interface*, 1–186 (1995) (ANSI T1.413-1995) (Ex. 1014) (“ANSI T1.413”).

For the same reasons set forth in our institution decision in the Cisco IPR, we determine that the information presented in the Petition shows a reasonable likelihood that Petitioner would prevail in showing that claims 1–10 of the '956 patent are unpatentable under 35 U.S.C. § 103(a) over Milbrandt, Hwang, and ANSI T1.413. Cisco Dec. 9–22. Accordingly, we institute an *inter partes* review on the same ground as the one on which we instituted review in the Cisco IPR.

III. GRANT OF MOTION FOR JOINDER

The Petition and Motion for Joinder in this proceeding were accorded a filing date of December 5, 2016.⁴ *See* Paper 5, 1. Thus, Petitioner's Motion for Joinder is timely because joinder was requested no later than one month after the institution date of the Cisco IPR, i.e., November 4, 2016.⁵ *See* 37 C.F.R. § 42.122(b).

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

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.

⁴ The "December 5, 2017" date in the Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response appears to be a typo.

⁵ Because December 4, 2016 fell on a Sunday, the one-month date extended to the next business day, December 5, 2016. *See* 37 C.F.R. § 1.7.

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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 above, the Petition in this case asserts the same unpatentability ground on which we instituted review in the Cisco IPR. *See* Mot. 6. Petitioner also relies on the same prior art analysis and expert testimony submitted by the Petitioner in the Cisco IPR. *See id.* Indeed, the Petition in the present case is nearly identical to the petition filed in the Cisco IPR. *See id.* Thus, this *inter partes* review does not present any ground or matter not already at issue in the Cisco IPR.

If joinder is granted, Petitioner anticipates participating in the proceeding in a limited capacity absent termination of Petitioner in IPR2016-01007 as a party. *Id.* at 7. Petitioner agrees to “assume a limited ‘understudy’ role” and “would only take on an active role if Cisco were no longer a party to the IPR.” *Id.* Petitioner further represents that it “presents no new grounds for invalidity and its presence in the proceedings will not introduce any additional arguments, briefing or need for discovery.” *Id.* Because Petitioner expects to participate only in a limited capacity, Petitioner submits that joinder will not impact the trial schedule for the Cisco IPR. *Id.* at 6–7.

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

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