

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RUCKUS WIRELESS, INC., BROCADE COMMUNICATION
SYSTEMS, INC. and NETGEAR, INC.,
Petitioners,

v.

CHRIMAR SYSTEMS, INC.,
Patent Owner.

Case IPR2017-00718
Patent 8,942,107 B2

Before KARL D. EASTHOM, GREGG I. ANDERSON, and ROBERT J.
WEINSCHENK, *Administrative Patent Judges*.

EASTHOM, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review and
Grant of Motion for Joinder to IPR2016-01391
37 C.F.R. §§ 42.108, 42.122(b)

I. INTRODUCTION

Petitioners, Ruckus Wireless, Inc., Brocade Communication Systems, Inc., and Netgear, Inc. (“Ruckus et al.”) filed a Petition (“Pet.”) on January 18, 2017 (Paper 1) requesting *inter partes* review of claims 1, 5, 31, 43, 70, 72, 74, 75, 83, 103, 104, 111, 123, and 125 of U.S. Patent No. 8,942,107 (“the ’170 patent,” Ex. 1001). Pet. 1. Along with the Petition, Petitioner filed a Motion for Joinder (Paper 3) with Case IPR2016-01391, *Juniper Networks, Inc. v. ChriMar Systems, Inc.*, a pending *inter partes* review involving the ’170 patent. Paper 3, 1. Chrimar Systems, Inc. is Patent Owner in both cases.

By a joint e-mail communication (by Ruckus et al. and Patent Owner in this proceeding and the parties in IPR2016-01391) with the Board on February 24, 2017, Patent Owner waived its right to file a Preliminary Response in the instant case, IPR2017-00718. Ex. 3001. Patent Owner also does not oppose Petitioner’s Motion for Joinder, provided that Ruckus et al. join via an “understudy role” in IPR2016-01391. *See* Paper 9 (Response to Motion to Joinder), 1. For the reasons described below, we institute an *inter partes* review of all the challenged claims and grant Petitioner’s Motion for Joinder.

II. ANALYSIS

An *inter partes* review may be joined with another *inter partes* review, subject to the provisions of 35 U.S.C. § 315(c), which governs joinder of *inter partes* review proceedings:

(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 313 or the expiration of the time for filing such a response, determines warrants the institution of an *inter partes* review under section 314.

As the moving party, Ruckus et al. bears the burden of proving that it is entitled to the requested relief. 37 C.F.R. § 42.20(c). A motion for joinder should (1) set forth the reasons joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; and (3) explain what impact (if any) joinder would have on the trial schedule for the existing review. *Kyocera Corp. v. Softview LLC*, Case IPR2013-00004, slip. op. at 3–4 (PTAB April 24, 2013) (Paper 15).

Ruckus et al. filed its Motion for Joinder on January 18, 2017. Paper 3. The Board instituted *inter partes* review in IPR2016-01391 on December 22, 2016. IPR2016-01391, Paper 9. Accordingly, the filing date of the Motion for Joinder satisfies the joinder filing requirement, as set forth in 37 C.F.R. § 42.122. *See id.* (“Any request for joinder must be filed . . . no later than one month after the institution date of any *inter partes* review for which joinder is requested”). The Petition asserts the same grounds as those on which the Board instituted review in IPR2016-01391. *Compare* Pet. 6–66, with IPR2016-01391, slip. op. at 6 (PTAB December 22, 2016) (Paper 9) (“’1391 DI”); *see also* Paper 3, 5 (“The Petition asserts only grounds that the Board has already instituted in [IPR2016-01391].”)

The Board instituted a trial in the IPR2016-01391 matter on the following grounds:

Reference(s)	Basis	Claims challenged
Hunter ¹ and Bulan ²	§ 103	1, 5, 31, 43, 70, 72, 74, 75, 83, 103, 104, 111, 123, and 125

¹ WO 96/23377, Richard K. Hunter et al. (Aug. 1, 1996).

² US 5,089,927, Sergio Bulan et al., (Feb. 18, 1992).

Reference(s)	Basis	Claims challenged
Bloch, ³ Huizinga, ⁴ and IEEE 802.3 ⁵	§ 103	1, 5, 31, 43, 70, 72, 74, 75, 83, 103, 104, 111, 123, and 125

'1391 DI, 6, 40–41.

As noted above, Ruckus et al., in the e-mail noted above, agreed to take an understudy role to petitioner in the '1391 IPR, Juniper Networks, Inc. (“Juniper”), and agreed to adhere to the existing trial schedule in IPR2016-01391. Ex. 3001; *see also* Paper 3, 4–7 (similar assurances). Ruckus et al. also demonstrates sufficiently that joinder will promote efficiency. *See* Paper 3, 2–5.

In view of the following: 1) the challenges in the instant Petition are identical to the grounds instituted in IPR2016-01391; 2) joinder will not impact the existing trial schedule in IPR2016-01391; 3) joinder will promote efficiency; and 4) all the parties agree that joinder is appropriate, we institute an *inter partes* review in this proceeding on the same grounds as those on which the Board instituted *inter partes* review in IPR2016-01391 and join this proceeding to IPR2016-01391.

Accordingly, Ruckus et al. shall adhere to the existing schedule of IPR2016-01391. Any future filings by Ruckus et al. in IPR2016-01391 shall be consolidated with the filings of Juniper. If, however, Ruckus et al. has a point of disagreement related to a consolidated filing, Ruckus et al. may request authorization from the Board to file an addendum of no more than five pages. If the Board authorizes Ruckus et al. to file such an addendum, Patent Owner may request authorization from the Board to file a response of no more than five pages to the addendum. The

³ US 4,173,714, Alan Bloch et al. (Nov. 6, 1979).

⁴ US 4,046,972, Donald D. Huizinga et al. (Sept. 6, 1977).

⁵ IEEE Standards 802.3-1993 and 802.3-1995 (Parts 1 and 2).

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page limits and word counts as set forth in 37 C.F.R. § 42.24 otherwise will apply to all consolidated filings.

Ruckus et al. is bound by any discovery agreements, including deposition arrangements, between Patent Owner and Juniper in IPR2016-01391, and Ruckus et al. shall not seek any discovery beyond that sought by Juniper. Patent Owner shall not be required to provide any additional discovery or deposition time as a result of the joinder. Juniper shall designate attorneys to conduct the cross-examination of any witness produced by Patent Owner and the redirect examination of any other witness, within the timeframes set forth in 37 C.F.R. § 42.53(c) or as otherwise agreed by Patent Owner and Juniper. No individual party will receive any additional cross-examination or redirect examination time. Moreover, if an oral hearing is requested and scheduled, Juniper shall designate attorney(s) to present a consolidated argument at the oral hearing.

The Board expects Ruckus et al., Juniper, and Patent Owner to meet and confer regarding any disputes between them and to contact the Board only if such matters cannot be resolved.

III. ORDER

For the reasons given, it is

ORDERED that Petitioner's Motion for Joinder is granted;

FURTHER ORDERED that IPR2017-00718 is instituted and Ruckus et al. are joined with IPR2016-01391;

FURTHER ORDERED that the grounds on which IPR2016-01391 were instituted remain unchanged and no other grounds are included in the joined proceeding;

FURTHER ORDERED that the Stipulated Schedule (Paper 17) and Order (Paper 18) in IPR2016-01391 shall govern the schedule of the joined proceeding;

FURTHER ORDERED that, throughout the joined proceeding, Juniper shall

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