

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

CHROMAR SYSTEMS, INC.,
Patent Owner.

Case IPR2017-00720
Patent 9,019,838 B2

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

WEINSCHENK, *Administrative Patent Judge*.

DECISION

Institution of *Inter Partes* Review
Grant of Motion for Joinder
37 C.F.R. §§ 42.108, 42.122(b)

I. INTRODUCTION

Ruckus Wireless, Inc., Brocade Communication Systems, Inc., and Netgear, Inc. (collectively, “Ruckus”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1, 2, 7, 26, 29, 38, 39, 40, 47, 55, and 69 (“the challenged claims”) of U.S. Patent No. 9,019,838 B2 (Ex. 1001, “the ’838 patent”). Ruckus also filed a Motion for Joinder (Paper 3, “Mot.”) requesting that it be joined to IPR2016-01397, *Juniper Networks, Inc. v. Chrimar Systems, Inc.*, a pending *inter partes* review involving the ’838 patent. Mot. 1. Chrimar Systems, Inc. is the Patent Owner in both proceedings.

In a joint email from the parties in this proceeding and the parties in IPR2016-01397, on February 24, 2017, Patent Owner waived its right to file a preliminary response in this proceeding. Ex. 3001. Patent Owner also indicates that it does not oppose Ruckus’s Motion for Joinder, provided that Ruckus maintains an “understudy” role in IPR2016-01397. Paper 9 (“Resp. to Mot.”), 1. For the reasons discussed below, we institute an *inter partes* review on all of the challenged claims in this proceeding, and we grant Ruckus’s Motion for Joinder.

II. ANALYSIS

A party may be joined to an *inter partes* review under 35 U.S.C. § 315(c). Section 315(c) states:

(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.

As the moving party, Ruckus bears the burden of proving that it is entitled to the relief requested in the Motion for Joinder. 37 C.F.R. § 42.20(c).

We instituted an *inter partes* review in IPR2016-01397 on January 4, 2017. *Juniper Networks, Inc. v. Chrimar Sys. Inc.*, Case IPR2016-01397, slip op. at 17–18 (PTAB Jan. 4, 2017) (Paper 8) (“Dec. on Inst.”). Ruckus filed its Motion for Joinder in this case on January 18, 2017. Mot. 7. Thus, Ruckus filed the Motion for Joinder within one month of institution in IPR2016-01397, as required by 37 C.F.R. § 42.122(b).

We instituted an *inter partes* review in IPR2016-01397 on the following grounds of unpatentability:

Claims	Basis	References
1, 2, 7, 26, 29, 38, 39, 40, 47, 55, and 69	35 U.S.C. § 103(a)	Hunter ¹ and Bulan ²
1, 2, 7, 26, 29, 38, 39, 40, 47, 55, and 69	35 U.S.C. § 103(a)	Bloch, ³ Huizinga, ⁴ IEEE 802.3-1993, ⁵ and IEEE 802.3-1995 ⁶

Dec. on Inst. 17–18. The Petition in this case asserts the same grounds of unpatentability as IPR2016-01397. Pet. 7; Mot. 5 (“The Petition asserts only grounds that the Board has already instituted in [IPR2016-01397].”); Dec. on Inst. 17–18. Further, Ruckus agrees to take an understudy role to Juniper Networks, Inc. (“Juniper”) in IPR2016-01397, and Ruckus agrees to adhere

¹ PCT Publication No. WO 96/23377 (Aug. 1, 1996). Ex. 1003.

² U.S. Patent No. 5,089,927 (Feb. 18, 1992). Ex. 1004.

³ U.S. Patent No. 4,173,714 (Nov. 6, 1979). Ex. 1005.

⁴ U.S. Patent No. 4,046,972 (Sept. 6, 1977). Ex. 1009.

⁵ IEEE Standard 802.3-1993 (1993). Ex. 1006.

⁶ IEEE Standard 802.3u-1995 (1995). Ex. 1007; Ex. 1008.

to the existing trial schedule in IPR2016-01397. Mot. 5–7; Ex. 3001. Ruckus also shows that joining it to IPR2016-01397 promotes efficiency. Mot. 4–5.

In sum, we find that 1) the asserted grounds of unpatentability in the Petition are identical to the grounds of unpatentability in IPR2016-01397; 2) joinder will not impact the existing trial schedule in IPR2016-01397; 3) joinder will promote efficiency; and 4) Juniper and Patent Owner do not oppose joinder. For the foregoing reasons, we institute an *inter partes* review in this proceeding on the same grounds that we instituted the *inter partes* review in IPR2016-01397, and we join Ruckus to IPR2016-01397.

As a result of joining Ruckus to IPR2016-01397, Ruckus shall adhere to the existing trial schedule in IPR2016-01397. Any future filings by Ruckus in IPR2016-01397 shall be consolidated with the filings of Juniper. If, however, Ruckus has a point of disagreement related to a consolidated filing, Ruckus may request authorization from the Board to file an addendum of no more than five pages. If the Board authorizes Ruckus 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 page limits and word counts set forth in 37 C.F.R. § 42.24 otherwise apply to all consolidated filings.

Ruckus is bound by any discovery agreements, including any deposition arrangements, between Patent Owner and Juniper in IPR2016-01397, and Ruckus shall not seek any discovery beyond that sought by Juniper in IPR2016-01397. Patent Owner shall not be required to provide any additional discovery or deposition time as a result of the joinder. In IPR2016-01397, Juniper shall designate attorney(s) to conduct the collective

cross-examination of any witness produced by Patent Owner and the collective redirect examination of any other witness within the time frames set forth in 37 C.F.R. § 42.53(c) or as otherwise agreed by Patent Owner and Juniper. Moreover, if an oral hearing is requested and scheduled in IPR2016-01397, Juniper shall designate attorney(s) to present a consolidated argument at the oral hearing.

The Board expects Ruckus, 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

In consideration of the foregoing, it is hereby

ORDERED that an *inter partes* review is instituted on all of the challenged claims in IPR2017-00720;

FURTHER ORDERED that Ruckus's Motion for Joinder is *granted*, and Ruckus is joined to IPR2016-01397;

FURTHER ORDERED that the grounds on which IPR2016-01397 were instituted remain unchanged and no other grounds are included in that proceeding;

FURTHER ORDERED that the Stipulated Schedule (Paper 16) and Order (Paper 18) in IPR2016-01397 shall govern the trial schedule of that proceeding;

FURTHER ORDERED that, throughout the proceeding in IPR2016-01397, Juniper shall file all papers as a single, consolidated filing;

FURTHER ORDERED that Ruckus is bound by any discovery agreements between Patent Owner and Juniper in IPR2016-01397, and that Ruckus shall not seek any discovery beyond that sought by Juniper in

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