

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

U.S. Patent No. 9,019,838

Filing Date: September 14, 2012

Issue Date: April 28, 2015

Inter Partes Review No. 2017-_____

Title: A CENTRAL PIECE OF NETWORK EQUIPMENT

MOTION FOR JOINDER

I. INTRODUCTION

Ruckus Wireless, Inc., Brocade Communication Systems, Inc. and Netgear, Inc. (“Petitioners”) submit concurrently with this motion a petition for *inter partes* review of U.S. Patent No. 8,019,838 (“the ‘838 patent”) (“Petition”) based on the identical grounds that form the basis for the pending *inter partes* review initiated by Juniper Networks, Inc. concerning the same patent, Case No. IPR2016-01397 (the “Juniper IPR”).

Petitioners respectfully request that the Petition be instituted and move that the Petition be joined with the Juniper IPR pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. §§ 42.22 and 42.122(b). Petitioners merely request an opportunity to join with the Juniper IPR as an “understudy” to Juniper, only assuming a more active role in the event Juniper settles with Patent Owner ChriMar Systems, Inc. (“ChriMar”). Petitioners do not seek to alter the grounds upon which the Board has already instituted the Juniper IPR, and joinder will have no impact on the IPR’s existing schedule. Petitioners have conferred with counsel for Juniper, and it does not oppose this motion. This motion is timely as it was filed within one month of the institution of IPR2016-01391. 35 U.S.C. §§ 21(b), 315(b), 315(c); 37 C.F.R. § 42.122(b).

II. BACKGROUND AND RELATED PROCEEDINGS

The '838 patent has been the subject of 45 civil actions filed in the Eastern District of Michigan, Eastern District of Texas, and Northern District of California. Attached as Exhibit 1012 is a list identifying each of these civil actions, which includes *Chrimar Systems Inc., et al. v. Ruckus Wireless, Inc.*, Case No 3:16-cv-00186-SI (N.D. Cal.) and *Chrimar Systems Inc., et al. v. Netgear, Inc.*, Case No 3:16-cv-00624-SI (N.D. Cal.). In addition to the '838 patent, ChriMar sued Petitioners Ruckus Wireless, Inc. and Netgear, Inc. for infringement of U.S. Pat. Nos. 8,155,012 ('012 patent), 8,942,107 ('107 patent), and 8,902,760 ('760 patent) (collectively, the "Asserted Patents.").

In July 2016, Juniper Networks, Inc. ("Juniper") filed four petitions for *inter partes* review against the Asserted Patents. See IPR Case Nos. IPR2016-01389 ('012 patent), -01399 ('760 patent), -01391 ('107 patent), and -01397 ('838 patent). The Board instituted IPR2016-01391 on December 22, 2016. See Paper 9. The Board instituted IPR2016-01397 and -01399 on January 4, 2017. See Paper 8, Paper 8. IPR2016-01389 is pending as of January 17, 2017. See Paper 1. In addition to this motion to join IRP2016-01397, Petitioners are filing related motions to join IPR Case Nos. IPR2016-01391 and -01399.

Several other IPRs have been filed against the Asserted Patents and are instituted or awaiting institution. The instituted IPRs include IPR2016-00569 ('107

patent), filed by the AMX, LLC on February 12, 2016, IPR2016-00574 ('760 patent), filed by AMX, LLC on February 29, 2016, IPR2016-00983 ('012 patent), filed by Dell, Inc. on April 29, 2016, IPR2016-01151 ('838 patent), filed by Dell Inc. on June 3, 2016 and IPR2016-01425 ('012 patent), filed by D-Link Systems, Inc. on July 13, 2016. The IPRs awaiting institution include IPR2016-01757 ('107 patent), -01758 ('838 patent), and -01759 ('760 patent), filed by Aerohive Networks, Inc. on September 8, 2016.

III. LEGAL STANDARD AND APPLICABLE RULES

Joinder is governed by 35 U.S.C. § 315(c), which reads as follows:

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.

A motion for joinder should “(1) set forth the 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* Decision on Joinder, IPR2013-00385 (Paper No. 17, July 29, 2013); *see also* Order Authorizing Joinder, IPR2013-00004 (Paper No. 15, April 24, 2013.)

Petitioners submit the factors outlined below support granting of the present Motion.

IV. PETITIONERS MEET THE REQUIREMENTS FOR MOTION FOR JOINDER

Petitioners submit that (1) joinder is appropriate because it will promote efficient determination of the validity of the '838 patent without prejudice to Juniper or ChriMar; (2) Petitioners' petition raises the same grounds for unpatentability as does Juniper's petition; (3) joinder would not affect the pending schedule in the Juniper IPR nor would it increase the complexity of that proceeding; and (4) Petitioners are willing to accept an understudy role in the Juniper IPR to minimize burden and schedule impact. Absent joinder, Petitioners could be prejudiced if the Juniper IPR is terminated before the Board issues a final written decision. Petitioners could have to litigate the same positions in the Petition before the District Court under a higher burden of proof, wasting resources and losing efficiency. Accordingly, joinder should be granted.

A. Joinder Will Promote the Efficient Determination of the '838 Patent's Validity and Will Not Prejudice Juniper or ChriMar

Granting joinder and allowing Petitioners to assume an understudy role will not prejudice Juniper or ChriMar. The Petition does not raise any issues that are not already before the Board in the Juniper IPR. Joinder thus would not affect the timing of the Juniper IPR or content of ChriMar's responses. The Board has granted motions for joinder in similar circumstances. *See, e.g.,* Institution of *Inter Partes* Review and Grant of Motion for Joinder, IPR2015-00543 (Paper 12, March 6, 2015);

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