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Paper No. 53
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL INC.,
Petitioner,

v.

ALACRITECH, INC.,
Patent Owner.

Case IPR2018-00372
Patent 7,337,241 B2

Before STEPHEN C. SIU, DANIEL N. FISHMAN, and
CHARLES J. BOUDREAU, *Administrative Patent Judges*.

FISHMAN, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review and
Granting Petitioner's Motion for Joinder
35 U.S.C. §§ 314(a), 315(c); 37 C.F.R. §§ 42.108, 42.122

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I. INTRODUCTION

Dell Inc. ("Dell" or "Petitioner"), filed a Petition (Paper 2, "Pet.") for *inter partes* review of claims 1-24 of U.S. Patent No. 7,337,241 B2 ("the '241 Patent") (Ex. 1001) pursuant to 35 U.S.C. §§ 311–319. On the same day as filing the Petition, Dell filed a Motion for Joinder. Paper 3 ("Joinder Motion" or "Mot."). The Joinder Motion seeks to join Dell as a party to *Intel Corp. v. Alacritech*, Case IPR2017-01392 ("the 1392 IPR"). Mot. 1. Previously, Cavium Inc. ("Cavium") filed a substantively identical petition and motion for joinder in IPR2017-01728 ("the 1728 IPR"), and was joined as a party to the 1392 IPR. In addition, Wistron Inc. ("Wistron") filed a substantively identical petition and motion for joinder in IPR2018-00328 ("the 328 IPR"), and was joined as a party to the 1392 IPR.

The Joinder Motion indicates Intel Corp. ("Intel"), Petitioner in the 1392 IPR, did not oppose Cavium's request to join the 1392 IPR, did not oppose Wistron's request to join the 1392 IPR, and does not oppose Dell's motion to join the 1392 IPR. Mot. 1. The Joinder Motion is silent regarding Patent Owner's position regarding the Joinder Motion. Alacritech, Inc. ("Patent Owner") filed a Preliminary Response that was silent regarding specific reference to Dell's Joinder Motion. Paper 8 ("Prelim. Resp.").

As explained further below, we institute trial in this *inter partes* review on the same grounds as instituted in IPR2017-01392, IPR2017-1728, and IPR2018-00328, and we grant Petitioner's Motion for Joinder.

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II. DISCUSSION

A. Institution of Trial

In the 1392 IPR, Intel challenged the patentability of claims 1–24 of the ’241 Patent on the following grounds:

Reference(s)	Basis	Claims challenged
Erickson,[1] Tanenbaum,[2] and Alteon[3]	§ 103	1–8, 18, 22, and 23
Erickson and Tanenbaum	§ 103	9–17, 19–21, and 24

IPR2017-01392 Paper 4, 14-15.

After considering Intel’s Petition and the Patent Owner’s Preliminary Response in the 1392 IPR, we instituted trial for the above-identified grounds of unpatentability. *See* IPR2017-01392 Paper 11, 26. Correspondingly, we instituted trial for the above-identified grounds of unpatentability in the 1728 IPR and in the 328 IPR.

Petitioner here (Dell) represents that this Petition is substantively identical to Intel’s Petition in IPR2017-01392 and challenges the same claims based on the same grounds. Mot. 1. We have considered the relevant Petitions and we agree with Petitioner’s representation that this Petition is substantially identical to the Petition in IPR2017-01392. *Compare* Pet. *with* IPR2017-01392 Paper 4.

Patent Owner’s Preliminary Response does not point out any differences from its Preliminary Response in the 1392 IPR. However, after

[1] U.S. Patent No. 5,768,618 (“Erickson,” Ex. 1005).
[2] Computer Networks, A. Tanenbaum, 3rd ed. (1996) (Ex. 1006, “Tanenbaum”).
[3] “Gigabit Ethernet Technical Brief: Achieving End-to-End Performance” by Alteon Networks (Ex. 1033, “Alteon”).

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reviewing Patent Owner's Preliminary Response here and in the 1392 IPR, we find the two responses to be substantially identical, with only one notable exception. We note that Patent Owner argues that Intel Corporation ("Intel"), for a variety of reasons, should have been named as a real party-in-interest fundamentally because Intel is a supplier to, and indemnitor of, Dell (a defendant in related infringement litigation). Prelim. Resp. 28–34. In the 1392 IPR, Patent Owner presented a similar argument in its Preliminary Response that Intel should have named Cavium and Dell as real parties-in-interest because of the alleged supplier-indemnitor relationships between Intel and Dell and between Cavium and Dell. IPR2017-01392 Paper 10, 29–38.

We have reviewed Patent Owner's arguments. On the record before us, for purposes of this Decision, and for similar reasons as in the 1392 IPR, we determine there is insufficient evidence that Intel controlled, or had the opportunity to control, *this* Petition and, thus, is not a real party-in-interest. *See* Case IPR2017-01392 Paper 11, 23–24. Moreover, as in the 1392 IPR, there is no allegation that naming additional real parties-in-interest would bar Petitioner in the instant proceeding. *See id.* at 19. Accordingly, the issue Patent Owner raises is not jurisdictional. *See Lumentum Holdings, Inc. v. Capella Photonics, Inc.*, Case IPR2015-00739, slip op. at 6 (PTAB March 4, 2016) (Paper 38) (precedential).

Accordingly, for essentially the same reasons stated in our Decision to Institute in IPR2017-01392, we conclude Petitioner has established a reasonable likelihood of prevailing with respect to at least one challenged claim, and we institute trial in this proceeding for claims 1–24 on the same grounds as in IPR2017-01392.

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B. Motion for Joinder

Based on authority delegated to us by the Director, we have discretion to join a petitioner for *inter partes* review to a previously instituted *inter partes* review. 35 U.S.C. § 315(c). Section 315(c) provides, in relevant part, that "[i]f 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." *Id.*

We grant Petitioner's Motion for Joinder with the 1392 IPR, subject to the condition that:

> Petitioner here (i.e., Dell Inc.) will be bound by all substantive and procedural filings and representations of current Petitioner in IPR2017-01392 (i.e., Intel Corp., Cavium Inc., and Wistron, Inc.), without a separate opportunity to be heard, whether orally or in writing, unless and until the proceeding is terminated with respect to Intel Corp., Cavium Inc., and Wistron, Inc.

In view of the foregoing, we determine that joinder based upon the above-noted condition will have little or no impact on the timing, cost, or presentation of the trial on the instituted grounds. Moreover, discovery and briefing will be simplified if Dell is joined as a party to the 1392 IPR.

III. ORDER

After due consideration of the record before us, and for the foregoing reasons, it is:

ORDERED that pursuant to 35 U.S.C. § 314, an *inter partes* review is hereby instituted for claims of the '241 Patent as follows: (1) claims 1–8, 18, 22, and 23 as obvious under 35 U.S.C. § 103(a) over Erickson,

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