

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DELL INC.,  
Petitioner,

v.

ALACRITECH, INC.,  
Patent Owner.

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Case IPR2018-00375  
Patent 7,673,072 B2

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

BOUDREAU, *Administrative Patent Judge*.

DECISION

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

## I. INTRODUCTION

Dell Inc. (“Dell” or “Petitioner”), filed a Petition (Paper 2, “Pet.”) for *inter partes* review of claims 1–21 of U.S. Patent No. 7,673,072 B2 (“the ’072 Patent”) (Ex. 1001) pursuant to 35 U.S.C. §§ 311–319. Petitioner also filed a Motion for Joinder. Paper 3 (“Joinder Motion” or “Mot.”). The Joinder Motion seeks to join Dell as a petitioner in *Intel Corp. v. Alacritech*, Case IPR2017-01406 (“the 1406 IPR”), to which Cavium, Inc. (“Cavium”) and Wistron Corporation (“Wistron”) have previously been joined. Mot. 1; *see* IPR2017-01707, Paper 8; IPR2018-00329, Paper 9. The Joinder Motion indicates Intel Corp. (“Intel”) and Cavium do not oppose Dell’s request to join that proceeding.<sup>1</sup> *Id.* Alacritech, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”).

As explained further below, we institute trial in this *inter partes* review on the same ground as instituted in the 1406 IPR, and we grant Petitioner’s Motion for Joinder.

## II. DISCUSSION

### A. *Institution of Trial*

In the 1406 IPR, Intel, Cavium, and Wistron challenge the patentability of claims 1–21 of the ’072 Patent under 35 U.S.C. § 103 over Erickson<sup>2</sup> and Tanenbaum96.<sup>3</sup> IPR2017-01406, Paper 1.

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<sup>1</sup> We note that Dell’s Petition and Joinder Motion were filed prior to the joinder of Wistron as a petitioner in the 1406 IPR on April 20, 2018.

<sup>2</sup> U.S. Patent No. 5,768,618. (“Erickson,” Ex. 1005).

<sup>3</sup> Andrew S. Tanenbaum, *Computer Networks*, Third Edition, 1996 (“Tanenbaum96,” Ex. 1006).

After considering the Petition and the Patent Owner's Preliminary Response in the 1406 IPR, we instituted trial for the above-identified ground of unpatentability. *See* IPR2017-01406, Paper 10. Petitioner here (Dell) represents that the present Petition is substantively identical to the Petition in the 1406 IPR and challenges the same claims based on the same ground.

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 the 1406 IPR. *Compare* Pet., with IPR2017-01406, Paper 1.

Patent Owner's Preliminary Response does not expressly identify any differences from its Preliminary Response in the 1406 IPR. However, after reviewing Patent Owner's Preliminary Responses here and in the 1406 IPR, we find the two responses to be substantially identical, with the exceptions that Patent Owner argues here that Intel should have been named as a real party in interest, whereas Patent Owner presented arguments in the Preliminary Response in the 1406 IPR that Intel should have named Cavium and Dell as real parties in interest, and Patent Owner omits from the present Preliminary Response certain arguments that were made in the Preliminary Response in the 1406 IPR. *See* IPR2017-01406, Paper 9, 17, 18–20 (arguing in the context of Patent Owner's assertion that Dell and Cavium should have been named as real parties in interest in the 1406 IPR that "Dell Desires Review of the '072 Patent" and that "Intel Has Effective Choice as to the Legal Theories and Proofs of Dell and Cavium").

On the record before us, for purposes of this Decision, and for similar reasons as in the 1406 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 IPR2017-01406, Paper 10, 3–6.

IPR2018-00375  
Patent 7,673,072 B2

Moreover, as in the 1406 IPR, there is no allegation that naming additional real parties in interest would bar Petitioner in the instant proceeding. *See id.* at 5. 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 the 1406 IPR, 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 1–21 on the same ground as in that case.

#### *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.*

Without opposition to the Joinder Motion from any party, we grant Petitioner’s Motion for Joinder with the 1406 IPR subject to the condition that, in the joined proceeding, Dell will be bound by all substantive and procedural filings and representations of Intel, Cavium, and Wistron in the 1406 IPR, without a separate opportunity to be heard, whether orally or in writing, unless and until the joined proceeding is terminated with respect to all three of Intel, Cavium, and Wistron.

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 ground. Moreover, discovery and briefing will be simplified if Dell is joined as a petitioner in the 1406 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 1–21 of the '072 Patent as obvious under 35 U.S.C. § 103(a) over Erickson and Tanenbaum96;

FURTHER ORDERED that Petitioner's Motion for Joinder with IPR2017-01406 is *granted*, and Dell Inc., is joined as a petitioner in IPR2017-01406 pursuant to 37 C.F.R. § 42.122(b), on the condition that, in the joined proceeding, Petitioner here (i.e., Dell Inc.) will be bound by all substantive and procedural filings and representations of current Petitioner in IPR2017-01406 (i.e., Intel Corp., Cavium, Inc., and Wistron Corporation), without a separate opportunity to be heard, whether orally or in writing, unless and until the joined proceeding is terminated with respect to Petitioners Intel, Cavium, and Wistron in IPR2017-01406;

FURTHER ORDERED that the ground on which an *inter partes* review was instituted in Case IPR2017-01406 remains unchanged, and no other grounds are instituted in the joined proceedings;

FURTHER ORDERED that the Scheduling Order in place for IPR2017-01406 (Paper 12) shall govern the joined proceedings;

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