

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Cavium, Inc.,
Petitioner

v.

Alacritech, Inc.,
Patent Owner

U.S. Patent No. 7,337,241
Filing Date: September 27, 2002
Issue Date: February 26, 2008

Inter Partes Review No. 2017-01728

Title: Fast-path apparatus for receiving data corresponding to a TCP connection

MOTION FOR JOINDER

I. INTRODUCTION

Cavium, Inc. (“Cavium” or “Petitioner”) submits this motion for the petition for *inter partes* review of U.S. Patent No. 7,337,241 (“the ‘241 patent”) filed on July 1, 2017, Case No. IPR2017-01728 (the “Petition”). The Petition was based on the identical grounds that form the basis for the pending *inter partes* review initiated by Intel Corporation (“Intel”) concerning the same patent, Case No. IPR2017-01392 (the “Intel ‘241 IPR”).

Petitioner respectfully requests that the Petition be instituted and moves that the Petition be joined with the Intel ‘241 IPR pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. §§ 42.22 and 42.122(b). Petitioner merely requests an opportunity to join with the Intel ‘241 IPR as an “understudy” to Intel, only assuming an active role in the event Intel no longer is a party to these proceedings. Petitioner does not seek to alter the grounds upon which the Board will institute the Intel ‘241 IPR, and joinder will have no impact on the Intel ‘241 IPR’s existing schedule. Petitioner has conferred with counsel for Intel, which does not oppose this motion. This motion is timely as the Intel ‘241 IPR petition was only recently filed and the Board has not yet issued an institution decision. 35 U.S.C. § 21(b); 37 C.F.R. § 42.122(b).

II. BACKGROUND AND RELATED PROCEEDINGS

Alacritech, the owner of the ‘241 patent, sued CenturyLink, Inc., Wistron Corp., and Dell Inc., in the District Court for the Eastern District of Texas in July

2015 for infringement of U.S. Pat. Nos. 7,124,205, 7,237,036, 7,337,241, 7,673,072, 8,131,880, 8,805,948, 9,055,104, and 7,945,699 (collectively, the “Asserted Patents”). The litigations are *Alacritech, Inc. v. CenturyLink, Inc.*, 2:16-cv-00693-JRG-RSP (E.D. Tex.); *Alacritech, Inc. v. Wistron Corp.*, 2:16-cv-00692-JRG-RSP (E.D. Tex.); and *Alacritech, Inc. v. Dell Inc.*, 2:16-cv-00695-RWS-RSP (E.D. Tex.).

In May and June 2017, Intel filed twelve petitions for *inter partes* review against the Asserted Patents. See IPR Case Nos. IPR2017-01392 (‘241 patent), -01391 (‘036 patent), -01393 (‘104 patent), -01395 (‘948 patent), -01402 (‘205 patent), -01405 (‘205 patent), -01406 (‘072 patent), -01409 (‘880 patent), -01410 (‘880 patent), -01559 (‘699 patent), -01705 (‘072 patent), and -01713 (‘241 patent). These IPRs are awaiting institution by the Board. In addition to this motion to join IPR2017-01392, Petitioner is filing related motions to join IPR Case Nos. IPR2017-01391, -01393, -01395, -01402, -01405, -01406, -01409, -01410, -01559, -01705 and -01713.

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.) Petitioner submits the factors outlined below in support of granting the present Motion for Joinder.

IV. PETITIONER MEETS THE REQUIREMENTS FOR MOTION FOR JOINDER

Petitioner submits that (1) joinder is appropriate because it will promote efficient determination of the validity of the ‘241 patent without prejudice to Alacritech, Inc.; (2) Petitioner’s petition raises the same grounds for unpatentability as does Intel ‘241 IPR petition and is based on the same testimony from the same technical expert; (3) joinder would not affect the expected schedule in the Intel ‘241 IPR nor would it increase the complexity of that proceeding; and (4) Petitioner is willing to accept an understudy role in the Intel ‘241 IPR to simply discovery and minimize the burden on the parties and the Board. Absent joinder, the Board will be burdened with entertaining two separate IPRs against the ‘241 patent on identical grounds, wasting resources and losing efficiency, and the parties will be subject to redundant discovery obligations. Accordingly, joinder should be granted.

A. Joinder Will Promote the Efficient Determination of the ‘241 Patent’s Validity and Will Not Prejudice Alacritech

Granting joinder and allowing Petitioner to assume an understudy role will not prejudice Alacritech or burden the Board. The Petition does not raise any issues that are not already before the Board in the Intel ‘241 IPR and thus the Board would receive consolidated filings for the joined IPRs instead of redundant submissions in separate IPRs. Likewise, Alacritech would only need to respond to consolidated filings rather than respond to separate filings from the separate petitioners. The Board has granted motions for joinder in similar circumstances. *See, e.g.,* Decision on Joinder, IPR2014-00743 (Paper 10, June 18, 2014).

Joinder is appropriate here to promote judicial efficiency and avoid unnecessary expense to the parties.

B. Petitioner’s Petition Raises the Same Grounds as the Intel ‘241 IPR

The Petition asserts only grounds that are awaiting the Board’s institution in the Intel ‘241 IPR, supported by the same technical expert and the same testimony. There are no new arguments for the Board to consider. Likewise, the Petition relies on the same exhibits.

C. Joinder Will Not Affect the Schedule of the Intel ‘241 IPR

Because Petitioner filed its pending IPR and corresponding motion for joinder so soon after the filing of the Intel ‘241 IPR, allowing Petitioner to join the Intel ‘241

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