

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAVIUM, INC.,
Petitioner,

v.

ALACRITECH, INC.,
Patent Owner.

Case IPR2017-01733
Patent 7,337,241 B2

Before STEPHEN C. SIU, DANIEL N. FISHMAN, and
WILLIAM M. FINK, *Administrative Patent Judges*.

FISHMAN, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review

37 C.F.R. § 42.108

Dismissing Petitioner's Motion for Joinder

37 C.F.R. § 42.122(b)

I. INTRODUCTION

Cavium, Inc. (“Petitioner”) requests *inter partes* review of claims 9–15, 17, and 19–21 of U.S. Patent No. 7,337,241 B2 (“the ’241 patent,” Ex. 1001) pursuant to 35 U.S.C. §§ 311 *et seq.* Paper 1 (“Pet.”). Alacritech, Inc. (“Patent Owner”) filed a preliminary response. Paper 7 (“Prelim. Resp.”).

Within a few days of filing the Petition, Petitioner filed a Motion for Joinder. Paper 3 (“Joinder Motion.”). The Joinder Motion seeks to join this proceeding with *Intel Corp. v. Alacritech*, Case IPR2017-01713 (“the 1713 IPR”). Joinder Motion 1.

At the time Petitioner filed its Petition and Joinder Motion, the Board had not yet decided whether to institute *inter partes* review of the ’241 patent in the 1713 IPR. On December 7, 2017, however, we entered a Decision in the 1713 IPR denying the Petitioner as to all challenges. 1713 IPR, Paper 7 (“1713 Institution Decision” or “Decision”).

For the reasons that follow, we determine that the Joinder Motion should be dismissed as moot and the Petition for *inter partes* review denied.

II. DISMISSAL OF MOTION FOR JOINDER

Because the petition in IPR2017-01713 was denied and *inter partes* review was not instituted, Petitioner’s Joinder Motion is dismissed as moot. 35 U.S.C. § 315(c).

III. DENIAL OF *INTER PARTES* REVIEW

Petitioner states that the Petition is “based on the identical grounds that form the basis for the pending *inter partes* review initiated by Intel Corporation” in the 1713 IPR. Joinder Motion 1. As Petitioner states,

[t]he Petition asserts only grounds that are awaiting the Board’s institution in the Intel [1713] IPR, supported by the same

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technical expert and the same testimony. There are no new arguments for the Board to consider. Likewise, the Petition relies on the same exhibits.

Id. at 4.

As noted above, on December 7, 2017, we denied institution of *inter partes* review on the grounds of obviousness over Connery et al. (U.S. Patent No. 5,937,169 (Ex. 1043, “Connery”)). 1713 Institution Decision 8. In our Decision, we determined that, “the ’241 patent is entitled to claim priority to the October 14, 1997 date of [U.S. Provisional Patent Application No. 60/061,809] and, thus, Connery, with a priority date of October 29, 1997, is not prior art to the ’241 patent.” *Id.* at 8. Here, Petitioner presents grounds and arguments regarding the priority date for the ’241 patent identical to those we found insufficient in our previous Decision. *See* Pet. 30–33; *see also* 1713 Institution Decision 5–8. Accordingly, for the reasons discussed in our Decision in IPR2017-01713 (*id.*), we deny the Petition in this proceeding.

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IV. ORDER

Accordingly, it is:

ORDERED that the Motion for Joinder is *dismissed* as moot; and

FURTHER ORDERED that the Petition is *denied* and no *inter partes* review is instituted.

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