UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT TRIAL AND APPEAL BOARD

WISTRON CORP.
Petitioner

v.

ALACRITECH INC.
Patent Owner

CASE: IPR2018-00328
U.S. PATENT NO. 7,337,241

PETITIONER'S MOTION FOR JOINDER UNDER 35 U.S.C. §315(c), 37 C.F.R. §§ 42.22 and 42.122(b)

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I. STATEMENT OF RELIEF REQUESTED

Wistron Corp. ("Petitioner") respectfully submits this Motion for Joinder together with the presently submitted Petition for *inter partes* review ("IPR") of claims 1-24 ("the challenged claims") of U.S. Patent No. 7,337,241 ("this Petition" or "the Present Petition" and "the 072 patent"). Pursuant to 35 U.S.C. §315(c) and 37 C.F.R. § 42.122(b), Petitioner hereby requests IPR of the challenged claims and joinder with *Intel Corp. v. Alacritech, Inc.*, IPR2017-01392 ("the Intel IPR") which was instituted on November 30, 2017. Joinder is appropriate because it will promote judicial efficiency, promote consistent resolution of the unpatentability grounds at issue and will not prejudice the parties of the Intel IPR.

This Motion and this Petition are being filed within one month of the institution decision in the Intel IPR, and are therefore timely. Counsel for Petitioner has conferred with Counsel for Intel as well as Counsel for Cavium Inc., which was previously joined to the Intel IPR, and both Intel and Cavium do not oppose joinder. Additionally, Counsel for Petitioner has conferred with Counsel for Patent Owner Alacritech Inc. ("Alacritech") by sending an email indicating intent to file "silent understudy" motions for joinder on December 18, 2017, by sending a draft of the motion for joinder on December 19, 2017, and drafts of the petitions on December 19, 2017 and December 20, 2017. Patent Owner has not indicated whether or not it opposes this motion.

II. STATEMENT OF MATERIAL FACTS

On June 30, 2016, Alacritech sued Petitioner, SMS InfoComm Corporation, and Wiwynn Corporation in the Eastern District of Texas alleging infringement of the '241 patent. *See Alacritech Inc. v. Wistron Corp. et al*., case no. 2-16-cv-00692 (E.D. Tex. June 30, 2016). On the same day in a different proceeding ("the Dell proceeding"), Alacritech sued Dell Inc. *See Alacritech Inc. v. Dell Inc.*, case no. 2-16-cv-00695 (E.D. Tex. June 30, 2016). On February 15, 2017, Intel intervened in the Dell proceeding and subsequently timely filed the Intel Petition on May 9, 2017 within one year of the commencement of the Dell Proceeding. *See Intel Corp. v. Alacritech, Inc.*, IPR2017-01392, Paper 2 (P.T.A.B. May 9, 2017). The Board instituted IPR of the challenged claims on November 30, 2017. On December 8, 2017, Cavium, Inc. was joined to the Intel Petition. *Cavium, Inc. v. Alacritech, Inc.*, IPR2017-01728, Paper 8 (P.T.A.B. Dec. 8, 2017).

As a result of this Motion, Petitioner is not subject to the one-year time bar for this Petition. *See* 35 U.S.C. §315(b); 37 C.F.R. §42.122(b). Accordingly the filing of this Motion and this Petition are timely. *See* 37 C.F.R. §42.122(b). The grounds of unpatentability are identical to the positions in the Intel IPR.

III. STATEMENT OF REASONS FOR REQUESTED RELIEF

a. Legal Standard

The Board has the authority under 35 U.S.C. §315(c) to grant a motion for

joinder of a party filing a proper IPR petition to a previously instituted IPR proceeding. This authority is discretionary. *See* 35 U.S.C. §315(b); 37 C.F.R. §42.122(b).

In exercising this discretionary authority, the Board considers the impact joinder would have on the proceedings, including substantive and procedural issues, as well as other issues that may be implicated by joinder, while remaining "mindful that patent trial regulations, including the rules for joinder, must be constructed to secure the just, speedy, and inexpensive resolution of every proceeding." *See Dell, Inc. v. Network-1 Security Solutions, Inc.*, IPR2013-00385, Paper No. 17 at 3 (P.T.A.B. July 29, 2013) at 3. The Board should consider "the policy preference for joining a party that does not present new issues that might complicate or delay an existing proceeding." *Id.* at 10. Under this framework, joinder of this Petition with the Intel IPR is appropriate.

Specifically, 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." *Id.* at 4. Each of these issues is addressed fully herein and each favors granting this Motion.

b. Joinder is Appropriate

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