

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

WISTRON CORPORATION,  
Petitioner,

v.

ALACRITECH, INC.,  
Patent Owner.

---

Case IPR2018-00329  
Patent 7,673,072 B2

---

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

Wistron Corporation (“Wistron” or “Petitioner”) filed a Petition (Paper 1, “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. Contemporaneous with the filing of the Petition, Petitioner

filed a Motion for Joinder. Paper 3 (“Joinder Motion” or “Mot.”). The Joinder Motion seeks to join Wistron as a petitioner in *Intel Corp. and Cavium, Inc. v. Alacritech, Inc.*, Case IPR2017-01406<sup>1</sup> (“the 1406 IPR”). Mot. 1. The Joinder Motion indicates Intel Corp. (“Intel”) and Cavium, Inc. (“Cavium”), current petitioners in the 1406 IPR, do not oppose Wistron’s request to join that proceeding. *Id.*

Alacritech, Inc. (“Patent Owner”) did not file an Opposition to the Joinder Motion. Instead, Patent Owner filed a Preliminary Response that is silent regarding the Joinder Motion. 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 Joinder Motion.

## II. DISCUSSION

### A. *Institution of Trial*

In the 1406 IPR, Intel and Cavium challenge the patentability of claims 1–21 of the ’072 Patent on the following ground:

References	Basis	Claims challenged
Erickson <sup>2</sup> and Tanenbaum96 <sup>3</sup>	§ 103	1–21

IPR2017-01406, Paper 1, 14.

<sup>1</sup> Cavium, Inc., which filed a petition and motion for joinder in Case IPR2017-01707, has been joined as a petitioner in the 1406 IPR.

<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 Patent Owner's Preliminary Response in the 1406 IPR, we instituted trial for the above-identified ground of unpatentability. *See* IPR2017-01406, Paper 10, 21. Petitioner here, Wistron, represents that the present Petition is substantively identical to the Petition in the 1406 IPR, challenges the same claims based on the same ground, and is supported by "substantially the same expert declaration." Mot. 4. 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 one exception. We note that, here, Patent Owner argues that Intel should have been named as a real party in interest because Intel is a supplier and indemnitor to Wistron and is an intervenor in Patent Owner's litigation against Wistron. Prelim. Resp. 12–13. In the 1406 IPR, Patent Owner presented a similar argument in its Preliminary Response that Petitioner Intel should have named Dell Inc. ("Dell") and Cavium as real parties in interest because of alleged supplier-indemnitor relationships between Intel and Dell and between Cavium and Dell. IPR2017-01406, Paper 9, 12–21. Here, Patent Owner argues the supplier/indemnitor relationship between Intel and Wistron requires that Intel be named as a real party in interest. Prelim. Resp. 12–21.

We have reviewed Patent Owner's arguments. On the record before us and for purposes of this Decision, and for similar reasons as in the 1406

IPR2018-00329  
Patent 7,673,072 B2

IPR, we determine there is insufficient evidence that Intel controlled, or had the opportunity to control, *this* Petition and, thus, that Intel is not a real party in interest. *See* IPR2017-01406, Paper 10, 3–6. Moreover, 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). As in the 1406 IPR, Patent Owner does not allege that naming additional real parties in interest such as Intel would bar Petitioner in the instant proceeding. *See* IPR2017-01406, Paper 10, 5–6.

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 as a party 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, Petitioner here (i.e., Wistron Corporation) will be bound by all substantive and procedural filings and representations of the current petitioners in IPR2017-

01406 (i.e., Intel Corp. and Cavium, Inc.), without a separate opportunity to be heard, whether orally or in writing, unless and until the joined proceeding is terminated with respect to both Intel and Cavium in IPR2017-01406.

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 Wistron 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 Wistron Corporation 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., Wistron Corporation) will be bound by all substantive and procedural filings and representations of the current petitioners in IPR2017-01406 (i.e., Intel Corp. and Cavium, Inc.), without a separate opportunity to be heard, whether orally or in writing, unless and until the joined proceeding is terminated with respect to both Intel and Cavium in IPR2017-01406;

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.