

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Dell Inc.,
Petitioner

v.

Alacritech, Inc.,
Patent Owner

U.S. Patent No. 7,673,072
Filing Date: June 25, 2007
Issue Date: March 2, 2010

Inter Partes Review No. IPR2018-00375

Title: Fast-Path Apparatus For Transmitting Data Corresponding To A TCP
Connection

MOTION FOR JOINDER

I. INTRODUCTION

Dell Inc. (“Dell” or “Petitioner”) submits this motion for joinder of the petition for *inter partes* review of U.S. Patent No. 7,673,072 (“the ’072 patent”) filed on December 27, 2017, Case No. IPR2018-00375 (the “Petition”). Dell’s Petition is based on grounds identical to those that form the basis for the instituted *inter partes* reviews initiated by Intel Corporation (“Intel”) concerning the same patent, Case No. IPR2017-01406 (the “Intel ’072 IPR”), to which Cavium’s *inter partes* review, Case No. IPR2017-01707 (the “Cavium ’072 IPR”) has been joined, and to which Case No. IPR2018-00329 (the “Wistron ’072 IPR”) also seeks joinder.

Petitioner respectfully requests that its Petition be instituted and moves that the Petition be joined with the Intel ’072 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 ’072 IPR as an “understudy” to Intel and Cavium, only assuming an active role in the event Intel and Cavium are no longer a party to these proceedings. Petitioner does not seek to alter the grounds upon which the Board instituted the Intel ’072 IPR, and joinder will have no impact on the Intel ’072 IPR’s existing schedule. Petitioner has conferred with counsel for Intel and Cavium, which do not oppose this motion. This motion is timely as the Intel ’072 IPR petition was instituted on November 28, 2017 and this filing is made within one month of that institution date. 35 U.S.C. §§ 21(b), 315(c); 37 C.F.R. § 42.122(b).

II. BACKGROUND AND RELATED PROCEEDINGS

Alacritech, the owner of the '072 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 Corporation filed twelve petitions for *inter partes* review against the Asserted Patents, including Case Nos. IPR2017-01391 ('036 patent), -01392 ('241 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). Decisions granting institution have been issued in IPR Case Nos. IPR2017-01391, -01392, -01393, -01405, -01406, -01409, and -01410. Case No. IPR2017-01732 is awaiting a decision on institution. In addition to this motion to join IPR2017-01405, Petitioner is filing related motions to join other instituted Intel IPRs. Intel has also filed more recent petitions in Case Nos. IPR2018-00226 and -00234. Wistron has filed more recent petitions in Case Nos. IPR2018-00327, -00328, and -00329.

In June and July 2017, Cavium, Inc., filed related petitions for *inter partes* review, including Case Nos. IPR2017-01707 ('072 Patent), -01714 ('104 Patent), -01718 ('036 Patent), -01728 ('241 Patent), -01732 ('072 Patent), -01735 ('205 Patent), -01736 ('880 Patent), and -01737 ('880 Patent), along with motions for joinder with the corresponding Intel IPRs. Case Nos. IPR2017-01707, -01714, -01718, -01728, -01735, -01736, and -01737 have each been instituted and Cavium's motions for joinder to the corresponding Intel IPRs have been granted.

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 '072 patent without prejudice to Alacritech, Inc.; (2) Petitioner's petition raises the same grounds for unpatentability as the Intel '072 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 '072 IPR nor would it increase the complexity of that proceeding; and (4) Petitioner is willing to accept an understudy role in the Intel '072 IPR to simplify discovery and minimize the burden on the parties and the Board. Accordingly, joinder should be granted.

A. Joinder Will Promote the Efficient Determination of the '072 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 '072 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 a single set of filings to which it would already be obligated to respond. The Board has granted

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