

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Cavium, Inc.,  
Petitioner

v.

Alacritech, Inc.,  
Patent Owner

U.S. Patent No. 8,805,948  
Filing Date: September 26, 2013  
Issue Date: August 12, 2014

Inter Partes Review No. 2018-00403

Title: Intelligent network interface system and method for protocol processing

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**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. 8,805,948 (“the ‘948 patent”) filed on December 27, 2017, Case No. IPR2018-00403 (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. IPR2018-00234 (the “0234 IPR”).

Petitioner respectfully requests that the Petition be instituted and moves that the Petition be joined with the 0234 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 0234 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 0234 IPR, and joinder will have no impact on the Intel ‘948 IPR’s expected schedule since an institution decision is not due for several months. Petitioner has conferred with counsel for Intel, which does not oppose this motion. This motion is timely as the 0234 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 ‘948 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.).

On November 22, 2017, Intel filed a petition for *inter partes* review against the ‘948 Patent (IPR2018-00234). This IPR is awaiting institution by the Board. In addition to this motion to join the 0234 IPR, Petitioner is filing a related motion to join IPR2018-00226 filed by Intel seeking review of U.S. Pat. No. 7,124,205.

### 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 ‘948 patent without prejudice to Alacritech, Inc.; (2) Petitioner’s petition raises the same grounds for unpatentability as does Intel ‘948 IPR petition (0234 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 ‘948 IPR (0234 IPR) nor would it increase the complexity of that proceeding; and (4) Petitioner is willing to accept an understudy role in the Intel ‘948 IPR (0234 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 ‘948 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 ‘948 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 0234 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 ‘948 IPR**

The Petition asserts only grounds that are awaiting the Board’s institution in the 0234 IPR, supported by the same technical expert and the same testimony. There are no new grounds for the Board to consider. Likewise, the Petition relies on the same prior art exhibits.<sup>1</sup>

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<sup>1</sup> Petitioner has substituted the original version of Ex. 1013 in the instant Petition for the 30<sup>th</sup> Edition of Ex. 1013 asserted in the 0234 IPR. However, the portions relied on as part of the grounds are identical. Likewise, the instant Petition relies on a different evidentiary declaration and affidavit to show the public availability

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