

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.

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Case IPR2017-01729  
Patent 8,805,948 B2

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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 1, 3, 6–9, 11, 14–17, 19, 21, and 22 of U.S. Patent No. 8,805,948 B2 (“the ’948 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.”).

Concurrently with 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 IPR2017-01395 (“the 1395 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 ’948 patent in the 1395 IPR. On November 22, 2017, however, we entered a Decision in the 1395 IPR denying the Petitioner as to all challenges. 1395 IPR, Paper 8 (“1395 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 IPR2017-01395 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 1395 IPR. Joinder Motion 1. As Petitioner states,

[t]he Petition asserts only grounds that are awaiting the Board's institution in the Intel [1395] IPR, supported by the same 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 November 22, 2017, we denied institution of *inter partes* review on the grounds of obviousness over Thia, Tanenbaum96, and Stevens2. 1395 Institution Decision 8. In our Decision, we determined that, “because the record does not support Stevens2 as a publicly accessible printed publication, we find that Petitioner has not established a reasonable likelihood of prevailing on its sole ground of unpatentability with respect to claims 1, 3, 6–9, 11, 14–17, 19, 21, and 22.” *Id.* at 8. Here, Petitioner presents grounds and arguments in support of the public availability of Stevens2<sup>1</sup> identical to those we found insufficient in our previous Decision. *Compare* Pet. 38 n.6; Ex. 1063 (“Stansbury Declaration”) with 1395 Institution Decision 5–6. Accordingly, for the reasons discussed in our Decision in IPR2017-01395 (*id.* at 4–8), we deny the Petition in this proceeding.

#### 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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<sup>1</sup> W. Richard Stevens et al., *TCP/IP Illustrated, Volume 2*, 1995 (“Stevens2,” Ex. 1013).

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