

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAVIUM, INC.,
Petitioner,

v.

ALACRITECH, INC.,
Patent Owner.

Case IPR2017-01734
Patent 7,124,205 B2

Before STEPHEN C. SIU, DANIEL N. FISHMAN, and
WILLIAM M. FINK, *Administrative Patent Judges*.

FINK, *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, 4–8, 11, and 13 of U.S. Patent No. 7,124,205 B2 (“the ’205 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.”).

Within a few days of filing 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 IPR2017-01402 (“the 1402 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 ’205 patent in the 1402 IPR. On November 6, 2017, however, we entered a Decision in the 1402 IPR denying the Petition as to all challenges. 1402 IPR, Paper 8 (“1402 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 IPR2017-01402 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 1402 IPR. Joinder Motion 1. As Petitioner states,

[t]he Petition asserts only grounds that are awaiting the Board’s institution in the Intel [1402] 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 6, 2017, we denied institution of *inter partes* review on the grounds of obviousness over Thia and SMB, and Thia, SMB, and Carmichael. 1402 Institution Decision 2, 7. In our Decision, we determined that, “because the record does not support SMB as a publicly available printed publication, . . . Petitioner has not established a reasonable likelihood of prevailing on its grounds of unpatentability with respect to claims 1, 4–8, 11, and 13.” *Id.* at 7. Here, Petitioner presents grounds and arguments in support of the public availability of SMB¹ identical to those we found insufficient in our previous Decision.² *See* Pet. 14 n.3; Ex. 1074 (“Rampersad Declaration”); 1402 Institution Decision 4. Accordingly, for the reasons discussed in our Decision (*see id.* at 3–7), we deny the Petition in this proceeding.

¹ X/Open Company Ltd., *Protocols for X/Open PC Interworking: SMB, Version 2, Technical Standard*, 1992 (“SMB,” Ex. 1055).

² On Friday, December 1, 2017 at 11:50 PM, Petitioner contacted the Board via email requesting a conference to “seek leave to file a Reply to the Patent Owner’s Preliminary Responses pursuant to 37 C.F.R. § 42.108(c) in the form of two supplemental declarations related to the public accessibility of Exhibit 1055.” As an initial matter, our rules only permit supplemental information *after* institution of *inter partes* review. *See* 37 C.F.R. § 42.123 (“Once a trial has been instituted, a party may file a motion to submit supplemental information . . .”). Moreover, not having heard from Petitioner in the 4 weeks since we denied the 1402 Petition, we have relied on Petitioner’s representation that there are no new exhibits or arguments for the Board to consider over the 1402 Petition. *See* Joinder Motion 4. Accordingly, we deny Petitioner’s request.

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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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