

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAVIUM, INC.,
Petitioner,

v.

ALACRITECH, INC.,
Patent Owner.

Case IPR2017-01736
Patent 8,131,880 B2

Before STEPHEN C. SIU, DANIEL N. FISHMAN, and
CHARLES J. BOUDREAU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION

Institution of *Inter Partes* Review and
Granting Petitioner's Motion for Joinder
35 U.S.C. §§ 314(a), 315(c); 37 C.F.R. §§ 42.108, 42.122

I. INTRODUCTION

Cavium, Inc. (“Cavium” or “Petitioner”), filed a Petition (Paper 1, “Pet.”) for *inter partes* review of claims 1, 5–10, 12, 14, 16, 17, 20–23, 27, 28, 45, and 55 of U.S. Patent No. 8,131,880 B2 (“the ’880 Patent”) (Ex. 1001) pursuant to 35 U.S.C. §§ 311–319. Within days of filing the Petition, Petitioner filed a Motion for Joinder. Paper 3 (“Joinder Motion” or “Mot.”). The Joinder Motion seeks to join Petitioner as a party to *Intel Corp. v. Alacritech*, Case IPR2017-01409 (“the 1409 IPR”). Mot. 1. The Joinder Motion indicates Intel Corp. (“Intel”), Petitioner in the 1409 IPR, does not oppose Cavium’s request to join that proceeding. *Id.*

As explained further below, we institute trial in this *inter partes* review on the same grounds as instituted in IPR2017-01409 and we grant Petitioner’s Motion for Joinder.

II. DISCUSSION

A. *Institution of Trial*

In IPR2017-01409, Petitioner Intel challenges the patentability of claims 1, 5–10, 12, 14, 16, 17, 20–23, 27, 28, 45, and 55 of the ’880 Patent under 35 U.S.C. § 103 over Thia¹ and Tanenbaum.² IPR2017-01409, Paper 1.

¹ Y.H. Thia and C.M. Woodside, “A Reduced Operation Protocol Engine (ROPE) for a Multiple-Layer Bypass Architecture,” 1995 (“Thia,” Ex. 1015).

² Andrew S. Tanenbaum, *Computer Networks*, Third Edition, 1996 (“Tanenbaum,” Ex. 1006).

After considering the Petition and the Patent Owner's Preliminary Response in IPR2017-01409, we instituted trial for the above-identified grounds of unpatentability. *See* IPR2017-01409, Paper 8. Petitioner here (Cavium) represents that this Petition is substantively identical to the Petition in IPR2017-01409 and challenges the same claims based on the same grounds. Mot. 1. We have considered the relevant Petitions and we agree with Petitioner's representation that this Petition is substantially identical to the Petition in IPR2017-01409. *Compare* Pet., with IPR2017-01409, Paper 1.

Patent Owner's Preliminary Response does not point out any differences from its Preliminary Response in the 1409 IPR. However, after reviewing Patent Owner's Preliminary Response here and in the 1409 IPR, we find the two responses to be substantially identical, with one exception. We note that, here, Patent Owner argues that QLogic, Inc. ("QLogic") should have been named as a real party-in-interest because QLogic, a wholly owned subsidiary of Cavium, is a supplier to, and indemnitor of, Dell (the defendant in related infringement litigation), and Cavium's only interest in the '880 patent is that of its subsidiary QLogic. *See* Prelim. Resp. 23–31. In the 1409 IPR, Patent Owner presented a similar argument in its Preliminary Response that Petitioner Intel should have named Cavium and Dell as real parties-in-interest because of the alleged supplier-indemnitor relationship between Intel and Dell and Cavium and Dell. IPR2017-01409, Paper 7. Here, Patent Owner argues the parent/subsidiary relationship between Petitioner and QLogic and the supplier/indemnitor relationship between QLogic and Dell require that QLogic be named as a real party-in-interest. *See* Prelim. Resp. 23–31.

We have reviewed Patent Owner's arguments. On the record before us and for purposes of this Decision, and for the similar reasons as in the 1409 IPR, we determine there is insufficient evidence that QLogic controlled, or had the opportunity to control, this Petition and, thus, is not a real party-in-interest. *See* Case IPR2017-01409, Paper 8, 12–15. Moreover, as in the 1409 IPR, there is no allegation that naming additional real parties-in-interest such as QLogic or Dell would bar Petitioner in the instant proceeding. *See id.* Accordingly, 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).

Accordingly, for essentially the same reasons stated in our Decision to Institute in IPR2017-01409, 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, 5–10, 12, 14, 16, 17, 20–23, 27, 28, 45, and 55 on the same grounds as in IPR2017-01409.

B. Motion for Joinder

Based on authority delegated to us by the Director, we have discretion to join a petitioner for *inter partes* review 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 1409 IPR, subject to the condition

that Cavium will be bound by all substantive and procedural filings and representations of Intel in the 1409 IPR, without a separate opportunity to be heard, whether orally or in writing, unless and until the proceeding is terminated with respect to Intel.

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 Cavium is joined as a party to the 1409 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, 5–10, 12, 14, 16, 17, 20–23, 27, 28, 45, and 55 of the '880 Patent as obvious under 35 U.S.C. § 103(a) over Thia and Tanenbaum;

FURTHER ORDERED that Petitioner's Motion for Joinder with IPR2017-01409 is *granted* and Cavium, Inc. is joined as a petitioner in IPR2017-01409;

FURTHER ORDERED that the grounds on which an *inter partes* review was instituted in Case IPR2017-01409 remain unchanged, and no other grounds are instituted in the joined proceedings;

FURTHER ORDERED that Petitioner here (i.e., Cavium, Inc.) will be bound in IPR2017-01409 by all substantive and procedural filings and representations of current Petitioner in IPR2017-01409 (i.e., Intel Corp.), without a separate opportunity to be heard, whether orally or in writing,

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.