

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL, INC.,
Petitioner,

v.

ALACRITECH, INC.,
Patent Owner.

Case IPR2018-00338
Patent 8,131,880 B2

Before STEPHEN C. SIU, DANIEL N. FISHMAN, and
CHARLES 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), 37 C.F.R. §§ 42.108, 42.122

I. INTRODUCTION

Dell, Inc. (“Dell” 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 ’205 Patent”) (Ex. 1001) pursuant to 35 U.S.C. §§ 311–319. Petitioner also filed a Motion for Joinder. Paper 3 (“Joinder Motion” or “Mot.”). The Joinder Motion seeks to join Dell as a petitioner in *Intel Corp. v. Alacritech*, Case IPR2017-01409 (“the 1409 IPR”), to which Cavium, Inc. (“Cavium”) has previously been joined. Mot. 1; *see* IPR2017-01736, Paper 8. The Joinder Motion indicates Intel Corp. (“Intel”) and Cavium, current Petitioners in the 1409 IPR, do not oppose Dell’s request to join that proceeding. *Id.* Alacritech, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”).

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

II. DISCUSSION

A. *Institution of Trial*

In IPR2017-01409, Intel and Cavium challenge 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 ground of unpatentability. *See* IPR2017-01409, Paper 8. Petitioner here (Dell) represents that this Petition is substantively identical to the Petition in IPR2017-01409 and challenges the same claims based on the same ground. 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.

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 ground 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, in the joined proceeding, Dell will be bound by all substantive and procedural filings and representations of Intel and Cavium in the 1409 IPR, without a separate opportunity to be heard, whether orally or in writing,

unless and until the joined proceeding is terminated with respect to both Intel and Cavium.

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 ground. Moreover, discovery and briefing will be simplified if Dell is joined as a petitioner in 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 Dell, Inc., is joined as a petitioner in IPR2017-01409 pursuant to 37 C.F.R. § 42.122(b), on the condition that, in the joined proceeding, Petitioner here (i.e., Dell, Inc.) will be bound by all substantive and procedural filings and representations of current Petitioner in IPR2017-01409 (i.e., Intel Corp. and Cavium, Inc.), without a separate opportunity to be heard, whether orally or in writing, unless and until the joined proceeding is terminated with respect to Petitioners Intel and Cavium in IPR2017-01409;

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

IPR2018-00338
Patent 8,131,880 B2

FURTHER ORDERED that the Scheduling Order in place for IPR2017-01409 (Paper 9) shall govern the joined proceedings;

FURTHER ORDERED that IPR2018-00338 is terminated under 37 C.F.R. § 42.72, and that all future filings in the joined proceeding are to be made only in IPR2017-01409;

FURTHER ORDERED that the case caption in IPR2017-01409 for all further submissions shall be changed to add Petitioner (Dell, Inc.) as a named Petitioner, and to indicate by footnote the joinder of Petitioner Cavium to that proceeding, as indicated in the attached sample case caption; and

FURTHER ORDERED that a copy of this Decision shall be entered into the record of IPR2017-01409.

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.