

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DELL, INC.,  
Petitioner,

v.

ALACRITECH, INC.,  
Patent Owner.

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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 Thia<sup>1</sup> and Tanenbaum.<sup>2</sup> IPR2017-01409, Paper 1.

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

<sup>2</sup> 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;

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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.

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