

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAVIUM, INC.,
Petitioner,

v.

ALACRITECH, INC.,
Patent Owner.

Case IPR2018-00403
Patent 8,805,948 B2

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

FISHMAN, *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. § 42.122

I. INTRODUCTION

Cavium, Inc. (“Petitioner”), filed a Petition (Paper 1, “Pet.”) for *inter partes* review of claims 1, 3, 6–8, 17, 19, 21, and 22 of U.S. Patent No. 8,805,948 B2 (Ex. 1001) pursuant to 35 U.S.C. §§ 311–319. On the same day as filing the Petition, Petitioner filed a Motion for Joinder. Paper 3 (“Joinder Motion” or “Mot.”). The Joinder Motion seeks to join Cavium as a petitioner in *Intel Corp. v. Alacritech*, Case IPR2018-00234 (“the 234 IPR”). Mot. 1. The Joinder Motion indicates Intel Corp., Petitioner in the 234 IPR, does not oppose Cavium’s request to join that proceeding. *Id.* However, the Joinder Motion is silent regarding Patent Owner’s position regarding the Joinder Motion.

Alacritech, Inc. (“Patent Owner”) did not file an Opposition to the Joinder Motion. Patent Owner filed a Preliminary Response that is silent regarding the Joinder Motion. Paper 8 (“Prelim. Resp.”).

As explained further below, we institute trial in this *inter partes* review on the same ground as instituted in IPR2018-00234 and we grant Petitioner’s Motion for Joinder.

II. DISCUSSION

A. *Institution of Trial*

In IPR2018-00234, Petitioner Intel challenges the patentability of claims 1, 3, 6–8, 17, 19, 21, and 22 as unpatentable under 35 U.S.C. 103(a)

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over the combined disclosures of Thia,¹ Tanenbaum96,² and Stevens2.³ IPR2018-00234 Paper 2, 18. After considering the Petition and the Patent Owner's Preliminary Response in IPR2018-00234, we instituted trial for the above-identified ground of unpatentability. *See* IPR2018-00234, Paper 7.

Petitioner here (Cavium) represents that this Petition is substantively identical to the Petition in IPR2018-00234 challenging 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 IPR2018-00234. *Compare* Pet., with IPR2018-00234, Paper 2.

Patent Owner's Preliminary Response does not point out any differences from its Preliminary Response in the 234 IPR. After reviewing Patent Owner's Preliminary Response here and in the 234 IPR, we find the two responses to be substantially identical. *Compare* Prelim. Resp., with IPR2108-00234 Paper 6.

Accordingly, for essentially the same reasons stated in our Decision to Institute in IPR2018-00234, 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, 3, 6–8, 17, 19, 21, and 22 on the same ground as in IPR2018-00234.

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 ("Tanenbaum96," Ex. 1006).

³ W. Richard Stevens *et al.*, *TCP/IP Illustrated, Volume 2*, 1995 ("Stevens2," Ex. 1013).

B. Motion for Joinder

Based on authority delegated to us by the Director, we have discretion to join an *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 234 IPR subject to the condition that:

In the joined proceeding, Petitioner here (i.e., Cavium, Inc.) will be bound by all substantive and procedural filings and representations of current Petitioner in IPR2018-00234 (i.e., Intel Corp.), without a separate opportunity to be heard, whether orally or in writing, unless and until the joined proceeding is terminated with respect to Petitioner Intel in IPR2018-00234.

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 the proceedings are joined.

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, 3, 6–8, 17, 19, 21, and 22 of the '948 patent as unpatentable under 35 U.S.C. 103(a) over the combined disclosures of Thia, Tanenbaum96, and Stevens2;

FURTHER ORDERED that Petitioner's Motion for Joinder with IPR2018-00234 is *granted*, and Cavium, Inc. is joined as a petitioner in IPR2018-00234;

FURTHER ORDERED that the ground on which an *inter partes* review was instituted in Case IPR2018-00234 remain unchanged, and no other grounds are instituted in the joined proceedings;

FURTHER ORDERED that Petitioner here (i.e., Cavium, Inc.) will be bound by all substantive and procedural filings and representations of current Petitioner in IPR2018-00234 (i.e., Intel Corp.), without a separate opportunity to be heard, whether orally or in writing, unless and until the proceeding is terminated with respect to Intel Corp;

FURTHER ORDERED that the schedule for this proceeding shall be governed by the current schedule and any changes in the schedule for IPR2018-00234;

FURTHER ORDERED that IPR2018-00403 is terminated under 37 C.F.R. § 42.72, and that all future filings are to be made only in IPR2018-00234;

FURTHER ORDERED that the case caption in IPR2019-00234 for all further submissions shall be changed to add Petitioner (Cavium, Inc.) as a

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