

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RIVERBED TECHNOLOGY, INC.,
Petitioner,

v.

REALTIME DATA LLC,
Patent Owner.

Case IPR2018-00656 B2
Patent US 8,717,204

Before JAMESON LEE, THOMAS L. GIANNETTI, and
GARTH D. BAER, *Administrative Patent Judges*.

BAER, *Administrative Patent Judge*.

DECISION

Instituting *Inter Partes* Review and Granting Motion for Joinder
35 U.S.C § 314; 35 U.S.C § 315(c); 37 C.F.R. § 42.122(b)

I. INTRODUCTION

Riverbed Technology, Inc. (“Riverbed”) filed a Petition requesting an *inter partes* review of claims 1–30 of U.S. Patent No. 8,717,204 B2 (“the ’204 patent”). Paper 2 (“Pet.”). Patent Owner Real Time Data LLC (“Patent Owner”) did not file a Preliminary Response to the Petition.

Along with its Petition, Riverbed filed a Motion for Joinder to join this proceeding with IPR2017-01710. Paper 3 (“Mot.”). Riverbed filed the Petition and Motion for Joinder on February 15, 2018, and February 16, 2018, respectively, both within one month after we instituted trial in IPR2017-001710. Patent Owner did not file a response to Riverbed’s Motion for Joinder.

As explained further below, we institute trial on the same grounds as instituted in IPR2017-01710 and grant Riverbed’s Motion for Joinder.

II. DISCUSSION

In IPR2017-01710, Commvault Systems, Inc. (“Commvault”) challenged claims 1–30 of the ’204 patent on the following grounds:

Reference(s)	Basis	Claim(s)
XMill ¹	35 U.S.C. § 103(a)	12–18, 20, and 21
XMill, RFC768, ² and RFC1180 ³	35 U.S.C. § 103(a)	14, 15, and 19
Ferris ⁴ and XMill	35 U.S.C. § 103(a)	1–8, 10, 11, 16, 17, 22–28, and 30
Ferris and Comer ⁵	35 U.S.C. § 103(a)	9 and 29
The 2003 CIP	35 U.S.C. § 102	1–30

Subsequent to the Petition in IPR2017-01710, Patent Owner filed a statutory disclaimer of claims 1–11, 15–17, and 22–30 of the '204 patent. IPR2017-01710, Paper 11, 2, 8. After considering the Petition and Patent Owner's Preliminary Response, we eventually instituted trial in IPR2017-01710 on all claims remaining in the '204 patent on the following grounds: obviousness of claims 12–14, 18, 20, and 21 over XMill; obviousness of claims 14 and 19 over XMill, RFC768, and RFC1180; and anticipation of

¹ Hartmut Liefke and Dan Suciu, *XMill: an Efficient Compressor for XML Data*, 2000 ACM SIGMOD International Conference on Management of Data (Proceedings), 153–64 (2000). Ex. 1011 (“XMill”).

² J. Postel, User Datagram Protocol RFC 768: (Aug. 28, 1980). Ex. 1014 (“RFC768”).

³ T. Socolofsky and C. Kale, A TCP/IP Tutorial RFC1180 (Jan. 1991). Ex. 1015 (“RFC1180”).

⁴ International Publication No. WO 02/13058 A2; Feb. 14, 2002. Ex. 1016 (“Ferris”).

⁵ Douglas E. Comer and David L. Stevens, *Internetworking with TCP/IP Vol III: Client Server Programming and Applications*, Prentice Hall (2001). Ex. 1017 (“Comer”).

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claims 12–14 and 18–20 over the 2003 CIP. *See id.* at 22 (instituting on obviousness grounds only); Paper 16, 2–3 (modifying our Institution Decision to include anticipation grounds).

As asserted in Petitioner’s Motion for Joinder, “Riverbed’s Petition is identical to the petition in the Commvault IPR with the exception of the updated petitioner name and mandatory notices.” *See* Mot. 1; *compare* IPR2018-00656, Paper 2, *with* IPR2017-01710, Paper 1. Riverbed also relies on the same expert testimony as Commvault. Mot. 7. Riverbed filed no additional expert testimony.

For the same reasons stated in our Decision on Institution in IPR2017-01710, we institute trial in this proceeding on the same grounds.

Having determined that institution is appropriate, we now turn to Riverbed’s Motion for Joinder. 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.” When determining whether to grant a motion for joinder we consider factors such as timing and impact of joinder on the trial schedule, cost, discovery, and potential simplification of briefing. *Kyocera Corp. v. SoftView, LLC*, Case IPR2013-00004, slip op. at 4 (PTAB Apr. 24, 2013) (Paper 15). Under the circumstances of this case, we determine that joinder is appropriate.

According to Riverbed, “the Present Petition challenges the same claims under the same grounds, while relying on the same arguments, expert declaration, and evidence.” Mot. 7. Further, “[j]oinder would have little, if any, impact on the Commvault IPR because no new grounds would be added, the schedule would not be affected, no additional briefing or

discovery would be required.” *Id.* at 6. Riverbed explains that it “moves to join the Commvault IPR to ensure that it reaches a final decision in the event Commvault settles with Patent Owner and is dismissed from the review.”

Id.

Riverbed further asserts as follows:

With respect to consolidated filings, any papers jointly submitted by petitioners will not exceed the normal word count or page limits for a single party set forth in the rules. Petitioner will not file, or request to file, any separate briefs beyond the consolidated filings. Petitioner will not request additional cross-examination or re-direct time. Additionally, with respect to any oral hearing, Commvault will be responsible for the presentation before the Board. Petitioner will not request any additional time to independently argue before the Board or attempt to submit its own demonstratives.

Id. at 10.

Patent Owner has not opposed Riverbed’s Motion.

Under the circumstances here, we agree with Petitioner that joinder is appropriate and will not unduly impact the ongoing trial in Case IPR2017-01710, but only if certain limitations are imposed on Petitioner’s role and involvement in the joined proceeding beyond those identified by Riverbed in its Motion. We limit Petitioner Riverbed’s participation in the joined proceeding, such that (1) Commvault alone is responsible for all petitioner filings in the joined proceeding until such time that it is no longer an entity in the joined proceeding, and (2) Riverbed is bound by all filings by Commvault in the joined proceeding, except for filings regarding termination and settlement. Riverbed must obtain prior Board authorization to file any paper or to take any action on its own in the joined proceeding, so long as Commvault remains as a non-terminated petitioner in the joined

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