

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

REALTIME ADAPTIVE STREAMING LLC,
Patent Owner.

Case IPR2019-00760
Patent 8,934,535 B2

Before KEVIN W. CHERRY, GARTH D. BAER, and
NABEEL U. KHAN, *Administrative Patent Judges*.

CHERRY, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
35 U.S.C. § 314
Granting Motion for Joinder
37 C.F.R. § 42.122(b)

I. INTRODUCTION

A. Background

Comcast Cable Communications, LLC (“Petitioner”) filed a Petition (Paper 1, “Pet.”) to institute an *inter partes* review of claims 1–6, 8–12, and 14 (the “challenged claims”) of U.S. Patent No. 8,934,535 B2 (Exhibit 1001, “the ’535 patent”). Concurrently, Petitioner filed a Motion for Joinder seeking to join Petitioner as party to *Sling TV, L.L.C., et al. v. Realtime Adaptive Streaming, LLC*, Case IPR2018-01342 (PTAB) (“the DISH IPR”). Paper 3 (“Mot.”). Realtime Adaptive Streaming, LLC (“Patent Owner”) has not filed a Preliminary Response. We have authority under 37 C.F.R. § 42.4(a) and 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted unless the information presented in the Petition “shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons described below, we institute *inter partes* review of all the challenged claims, and grant Petitioner’s Motion for Joinder.

B. Related Proceedings

Petitioner informs us that the ’535 patent is involved in a number of related matters. *See* Pet. 4–6.

C. Asserted Grounds of Unpatentability

Petitioner challenges claims 1–6, 8–12, and 14 of the '535 patent on the following grounds:

Reference(s)	Basis	Challenged Claim(s)
Dvir ¹	§ 102	1, 2, 9, 10, and 14
Dvir	§ 103(a)	1, 2, 9, 10, and 14
Dvir and Ishii ²	§ 103(a)	3–6, 8, 11, and 12

Pet. 8.

II. DISCUSSION

A. Institution of Inter Partes Review

In its Motion for Joinder, Petitioner represents that this Petition “challenge[s] the same claims of the '535 Patent challenged in the DISH IPR and asserts only the grounds that the Board has already instituted in the DISH IPR.” Mot. 7. Moreover, Petitioner submits that “[t]here are no new arguments for the Board to consider,” and the Petition “relies on the same exhibits and expert declaration as the DISH IPR so there is no new or additional evidence for the Board to consider.” *Id.* at 7–8. Our independent review of the Petition and the DISH IPR petition confirms Petitioner’s representations, and that the Petitions in the two proceedings are substantially the same.

The DISH IPR petition was filed by Sling TV, L.L.C., Sling Media L.L.C., DISH Network L.L.C., and DISH Technologies L.L.C. (collectively “DISH”), on July 3, 2018, challenging claims 1–6, 8–12, and 14 of the '535

¹ Dvir, U.S. Patent No. 6,557,001 B1, iss. Apr. 29, 2003, filed Nov. 12, 1999 (Exhibit 1004, “Dvir”).

² U.S. Pat. No. 5,675,789 (issued Oct. 7, 1997) (Ex. 1005, “Ishii”).

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patent on the same grounds raised in this Petition.³ See DISH IPR, Paper 9, 8. Patent Owner filed a preliminary response to the DISH IPR petition on November 8, 2018. DISH IPR, Paper 6. We instituted *inter partes* review based on the DISH IPR petition on January 31, 2019. DISH IPR, Paper 9 (“DISH IPR Institution Decision”). Patent Owner filed a Response to the DISH IPR petition on April 1, 2019. DISH IPR, Paper 14. Patent Owner has not filed a Preliminary Response to this Petition.

Accordingly, upon our review of the Petition and for the reasons discussed above and in the DISH IPR Institution Decision, we are persuaded Petitioner has demonstrated a reasonable likelihood of success in showing the unpatentability of the challenged claims of the '535 patent on the same grounds raised and instituted in the DISH IPR. We, therefore, institute *inter partes* review based on the Petition.

B. Motion for Joinder

Joinder in *inter partes* reviews is governed by 35 U.S.C. § 315(c), which reads:

If 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 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an *inter partes* review under section 314.

³ GOOGLE LLC filed IPR2019-00748 and was joined as a petitioner to the DISH IPR (DISH and GOOGLE LLC shall be collectively referred to as the “DISH IPR petitioners”). See DISH IPR, Paper 9; Case IPR2019-00748, Paper 5.

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A motion for joinder should (1) set forth reasons why joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; (3) explain what impact (if any) joinder would have on the trial schedule for the existing review; and (4) address specifically how briefing and discovery may be simplified. *See Kyocera Corp. v. SoftView LLC*, Case IPR2013-00004, slip op. at 4 (PTAB Apr. 24, 2013) (Paper 15).

We instituted the DISH IPR on January 31, 2019. *See* DISH IPR Institution Decision. Petitioner filed this Petition and Motion for Joinder on February 28, 2019, i.e., within one month of the institution date of the DISH IPR. *See* Pet. & Mot. Thus, Petitioner timely filed its Motion for Joinder. *See* 37 C.F.R. § 42.122(b).

As discussed above, we have determined that this Petition and the DISH IPR petition are

substantially identical; Petitioner represents that its petition raises the same grounds for unpatentability as does DISH's petition; joinder would not affect the pending schedule in the DISH IPR nor would it increase the complexity of that proceeding; and Petitioner is willing to accept an "understudy" role in the DISH IPR to avoid burden and schedule impact.

Mot. 6.

Patent Owner has not responded to Petitioner's Motion for Joinder. Accordingly, on the basis of Petitioner's representations described above, we agree that joining Petitioner to the DISH IPR is appropriate under the present circumstances. We, therefore, *grant* Petitioner's Motion for Joinder.

III. CONCLUSION

For the foregoing reasons, we are persuaded that Petitioner has demonstrated a reasonable likelihood that it will succeed in showing claims 1–6, 8–12, and 14 are unpatentable. At this preliminary stage, we have not

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