

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAVIUM, INC.,
Petitioner,

v.

ALACRITECH, INC.,
Patent Owner.

Case IPR2017-01729
Patent 8,805,948 B2

Before STEPHEN C. SIU, DANIEL N. FISHMAN, and
WILLIAM M. FINK, *Administrative Patent Judges*.

FISHMAN, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review

37 C.F.R. § 42.108

Dismissing Petitioner's Motion for Joinder

37 C.F.R. § 42.122(b)

I. INTRODUCTION

Cavium, Inc. (“Petitioner”) requests *inter partes* review of claims 1, 3, 6–9, 11, 14–17, 19, 21, and 22 of U.S. Patent No. 8,805,948 B2 (“the ’948 patent,” Ex. 1001) pursuant to 35 U.S.C. §§ 311 *et seq.* Paper 1 (“Pet.”). Alacritech, Inc. (“Patent Owner”) filed a preliminary response. Paper 7 (“Prelim. Resp.”).

Concurrently with the Petition, Petitioner filed a Motion for Joinder. Paper 3 (“Joinder Motion.”). The Joinder Motion seeks to join this proceeding with *Intel Corp. v. Alacritech*, Case IPR2017-01395 (“the 1395 IPR”). Joinder Motion 1.

At the time Petitioner filed its Petition and Joinder Motion, the Board had not yet decided whether to institute *inter partes* review of the ’948 patent in the 1395 IPR. On November 22, 2017, however, we entered a Decision in the 1395 IPR denying the Petitioner as to all challenges. 1395 IPR, Paper 8 (“1395 Institution Decision” or “Decision”).

For the reasons that follow, we determine that the Joinder Motion should be dismissed as moot and the Petition for *inter partes* review denied.

II. DISMISSAL OF MOTION FOR JOINDER

Because the petition in IPR2017-01395 was denied and *inter partes* review was not instituted, Petitioner’s Joinder Motion is dismissed as moot. 35 U.S.C. § 315(c).

III. DENIAL OF *INTER PARTES* REVIEW

Petitioner states that the Petition is “based on the identical grounds that form the basis for the pending *inter partes* review initiated by Intel Corporation” in the 1395 IPR. Joinder Motion 1. As Petitioner states,

[t]he Petition asserts only grounds that are awaiting the Board’s institution in the Intel [1395] IPR, supported by the same technical expert and the same testimony. There are no new arguments for the Board to consider. Likewise, the Petition relies on the same exhibits.

Id. at 4.

As noted above, on November 22, 2017, we denied institution of *inter partes* review on the grounds of obviousness over Thia, Tanenbaum96, and Stevens2. 1395 Institution Decision 8. In our Decision, we determined that, “because the record does not support Stevens2 as a publicly accessible printed publication, we find that Petitioner has not established a reasonable likelihood of prevailing on its sole ground of unpatentability with respect to claims 1, 3, 6–9, 11, 14–17, 19, 21, and 22.” *Id.* at 8. Here, Petitioner presents grounds and arguments in support of the public availability of Stevens2¹ identical to those we found insufficient in our previous Decision. *Compare* Pet. 38 n.6; Ex. 1063 (“Stansbury Declaration”) *with* 1395 Institution Decision 5–6. Accordingly, for the reasons discussed in our Decision in IPR2017-01395 (*id.* at 4–8), we deny the Petition in this proceeding.

IV. ORDER

Accordingly, it is:

ORDERED that the Motion for Joinder is *dismissed* as moot; and

FURTHER ORDERED that the Petition is *denied* and no *inter partes* review is instituted.

¹ W. Richard Stevens et al., *TCP/IP Illustrated, Volume 2*, 1995 (“Stevens2,” Ex. 1013).

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