

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO. LTD
Petitioner

v.

FRACTUS, S.A.
Patent Owner

Case IPR2014-00008 (Patent 7,123,208)
Case IPR2014-00011 (Patent 7,397,431)
Case IPR2014-00012 (Patent 7,394,432)
Case IPR2014-00013 (Patent 7,015,868)¹

Before GLENN J. PERRY, JENNIFER S. BISK, and
PATRICK M. BOUCHER, *Administrative Patent Judges*.

PERRY, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

¹ The parties should refrain from using a multiple case caption.

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IPR2014-00011
IPR2014-00012
IPR2014-00013

I. INTRODUCTION

This decision applies to, and is made of record in, each of the *inter partes* reviews listed on the cover page of this Decision.

U.S. Patent Nos. 7,123,208; 7,397,431; 7,397,432; and 7,015,868 belong to a family of patents owned by Fractus, S.A. (“Fractus” or “Patent Owner”) related to antenna structures. On October 4, 2013, Samsung Electronics Co. Ltd. (“Samsung” or “Petitioner”) filed four petitions for *Inter Partes* Review (“IPR”):

Case No.	Patent	Claims	Paper No.
IPR2014-00008	7,123,208	1, 7, 10, and 12	4
IPR2014-00011	7,397,431	1, 12-14, and 40	3
IPR2014-00012	7,394,432	1 and 6	2
IPR2014-00013	7,015,868	1, 26, 32-33, and 35	2

Patent Owner filed mandatory notices in each of the IPRs,² but has not filed a preliminary response to any of these petitions. The Board has jurisdiction under 35 U.S.C. § 314.

Each of the four patents is involved in patent litigation captioned *Fractus, S.A. v. Samsung Electronics Co., Ltd.*, No. 6:13-cv-00210 (E.D. Tex). Samsung was served with a complaint in that proceeding on or about Feb 28, 2013. Also, each of the four patents was involved in patent litigation captioned *Fractus, S.A. v. Samsung Elecs. Co., Ltd.*, No. 6:09-cv-203 (E.D. Tex). Petitioner was served with a complaint in that proceeding on or about May 7, 2009. In that litigation, Patent Owner asserted claims of infringement of its patents by Petitioner, including the

² IPR2014-00008 (Papers 6 and 7); IPR2014-00011 (Paper 6); IPR2014-00012 (Paper 4); IPR2014-00013 (Papers 5 and 6).

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four patents at issue in these Petitions.³ That case is on appeal to the Court of Appeals for the Federal Circuit. *Fractus, S.A. v. Samsung Elecs.*, No. 12-1633 (Fed. Cir.).

We deny the petitions because they were not filed within the one-year period set forth in 35 U.S.C. § 315(b).

II. DISCUSSION

Section 315(b) of Title 35 of the United States Code provides:

(b) PATENT OWNER’S ACTION.—An *inter partes* review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent. The time limitation set forth in the preceding sentence shall not apply to a request for joinder under subsection (c).

The legislative history of 35 U.S.C. § 315(b) indicates that Congress intended *inter partes* reviews to “provid[e] quick and cost effective alternatives to litigation.” H.R.REP. NO. 112-98, at 48 (2011), *reprinted in* 2011 U.S.C.C.A.N. 67, 78. The legislative history indicates also that 35 U.S.C. § 315(b) was intended to set a “deadline for allowing an accused infringer to seek inter partes review after he has been sued for infringement.” 157 CONG. REC. S5429 (daily ed. Sep. 8, 2011) (statement of Sen. Kyl). The deadline helps to ensure that *inter partes* review is not used as a “tool[] for harassment” by “repeated litigation and administrative attacks.” H.R. Rep. No. 112-98 at 48; *reprinted in* 2011 U.S.C.C.A.N. at 78. Allowing such attacks “would frustrate the purpose of the section as providing quick and cost effective alternatives to litigation.” *Id.*

³ See IPR2014-00008 (Ex. 1010); IPR2014-00011 (Ex. 1010); IPR2014-00012 (Ex. 1010); IPR2014-00013 (Ex. 1010).

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Petitioner argues in each of the petitions that the patent infringement complaint served in 2009 does not bar the institution of an *inter partes* review under § 315(b) because it was filed before the effective date of the Leahy-Smith America Invents Act, Public Law 112-29, 125 Stat. 284 (September 16, 2011) (“America Invents Act”). *See, e.g.* IPR2014-00008 at 4-6. According to Petitioner, the complaint served in 2009 cannot be a complaint that “*is* served” (emphasis added) within the meaning of § 315(b), and that Congress would have used “*was* served” (emphasis added) if it intended complaints served before enactment of the America Invents Act also to trigger the one-year deadline. *See, e.g.*, IPR2014-00008, Paper 4 at 4-6.

The Board consistently has taken the position that § 315(b) bars institution of an *inter partes* review based on a complaint for infringement served more than one year before filing of the request for *inter partes* review, even if the complaint at issue was served before passage of the America Invents Act. *See, e.g.*, *Universal Remote control, Inc. vs. Universal Electronics, Inc.*, IPR No. IPR2013-00168, slip. op. PTAB August 26, 2013; *St. Jude Medical, Cardiology Division, Inc. vs. Volcano Corporation*, IPR No. IPR2013-00258, slip. op. PTAB October 16, 2013. We are not now persuaded otherwise.

Petitioner further argues that even if the Board decides the May 5, 2009 complaint “*is*” served in accordance with 35 U.S.C. § 315(b), Petitioner would not be estopped from filing this petition because the February 28, 2013 complaint is “a complaint” and the petitions were filed within a year of being served “a complaint.” *See, e.g.*, IPR 2014-00008, Paper 4 at 7-8.

Petitioner’s construction of § 315(b) incorrectly supposes that institution of an *inter partes* review is *authorized* by the statute within a year of being served

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with a complaint for patent infringement. The statute provides no such authorization. Rather, the statute *bars* institution of an *inter partes* review on any patent that was the subject of a patent-infringement complaint served on Petitioner more than one year before the filing of an *inter partes* review petition.

III. CONCLUSION

The Board denies the IPR petitions because they were not filed within the time limit imposed by 35 U.S.C. § 315(b).

IV. ORDER

Accordingly, it is

ORDERED that the Petition in IPR2014-00008 challenging the patentability of claims 1, 7, 10, and 12 of U.S. Patent No. 7,123,208 is *denied*.

ORDERED that the Petition in IPR2014-00011 challenging the patentability of claims 1, 12-14, and 40 of U.S. Patent No. 7,397,431 is *denied*.

ORDERED that the Petition in IPR2014-00012 challenging the patentability of claims 1 and 6 of U.S. Patent No. 7,394,432 is *denied*.

ORDERED that the Petition in IPR2014-00013 challenging the patentability of claims 1, 26, 32, 33, and 35 of U.S. Patent No. 7,015,868 is *denied*.

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