

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SAMSUNG ELECTRONICS CO. LTD  
Petitioner

v.

FRACTUS, S.A.  
Patent Owner

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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)<sup>1</sup>

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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

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<sup>1</sup> 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,<sup>2</sup> 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

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<sup>2</sup> 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.<sup>3</sup> 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.*

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<sup>3</sup> 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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