

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUNIPER NETWORKS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

IPR2019-01403
Patent 7,418,731 B2

Before MIRIAM L. QUINN, PATRICK M. BOUCHER, and
CHARLES J. BOUDREAU, *Administrative Patent Judges*.

BOUCHER, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request for Rehearing of
Decision Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.71(d)

Juniper Networks, Inc. ("Petitioner") requests rehearing of the
Decision Denying Institution of *Inter Partes* Review (Paper 7, "Decision" or
"Dec.") in this proceeding. Paper 8 ("Request" or "Req. Reh'g"). The
request is denied.

I. REQUEST FOR EXPANDED PANEL

Petitioner “respectfully requests that an expanded panel be designated to consider this request for rehearing and to decide the rehearing on its merits.” Req. Reh’g 4. Our governing statutes and regulations do not provide for parties to request, or panels to authorize, an expanded panel. *See generally* 35 U.S.C. § 6; 37 C.F.R. §§ 41.1–42.412. Under our Standard Operating Procedures, however, the Chief Administrative Patent Judge may consider panel expansions upon a “suggestion” from a judge, panel, or party. PTAB SOP 1, 15 (§ III.M.); *see also Apple Inc. v. Rensselaer Polytechnic Inst.*, IPR2014-00319, Paper 20 at 2 n.1 (PTAB Dec. 12, 2014) (expanded panel) (per curiam).

Our Standard Operating Procedure 1 exemplifies some of the reasons for which the Chief Judge may expand a panel. PTAB SOP 1, 15 (§ III.M.). For example, an expanded panel may be appropriate “to secure and maintain uniformity of the Board’s decisions, e.g., in related cases ordinarily involving different three judge panels.” *Id.* (§ III.M.1.).

In this case, the Chief Judge has considered Petitioner’s suggestion for an expanded panel, but has determined that an expanded panel is not warranted.

II. ANALYSIS

The applicable standard for granting a request for rehearing of a petition decision is abuse of discretion. 37 C.F.R. § 42.71(c). The party seeking rehearing has the burden of showing the decision should be modified. 37 C.F.R. § 42.71(d).

The Decision denied institution of a trial as time-barred under 35 U.S.C. § 315(b). Dec. 4–6. Briefly, in related litigation, Finjan, Inc. (“Patent Owner”) served a complaint alleging infringement of the sole claim challenged by Petitioner in this proceeding on June 8, 2018, which is more than a year before the July 26, 2019, date the Petition (Paper 2) was filed. Exs. 2001, 2002. Such service was effected in accordance with leave granted by the district court on June 6, 2018. Ex. 2003. “Due to an error by the Court,” the district court vacated that order on June 13, 2018. Ex. 2004. After a hearing, the district court again granted leave for Patent Owner to file the complaint on July 19, 2018. Ex. 2005. The complaint was filed with the court on July 27, 2018. *See* Ex. 2006; Paper 6 (Preliminary Response), 2.

Because service occurred between the June 6, 2018 grant by the district court and the June 13, 2018 vacatur of that grant, we determined that “service occurred at a time authorized by the district court.” Dec. 6. In its Request, Petitioner contends that, because the district court originally granted leave to serve the complaint in “error,” “Patent Owner’s June 8, 2018 filing was not properly served and cannot start the clock on Petitioner’s one-year deadline.” Req. Reh’g 1. But in advancing this contention, Petitioner misconstrues the meaning of “properly served” in the context of the Board’s precedential decision in *GoPro, Inc. v. 360Heros, Inc.*, IPR2018-01754, Paper 38 (PTAB Aug. 23, 2019) (precedential). In recognizing that a complaint “improperly served” does not trigger the § 315(b) time bar, the Precedential Opinion Panel in *GoPro* cites *IpDatatel, LLC v. ICN Acquisition, LLC*, IPR2018-01823, Paper 17 at 10–18 (PTAB

Apr. 17, 2019) for the interpretation of “served” in § 315(b) as “requir[ing] compliance with Rule 4 of the Federal Rules of Civil Procedure.” *GoPro* at 14. Although we alerted the parties in our Decision that “we discern no evidence on this record that service failed to comply with Rule 4 of the Federal Rules of Civil Procedure,” Petitioner offers no evidence or argument in its Request that prompts us to reconsider that finding. *See* Dec. 6.

At best, Petitioner’s argument might be construed as an argument that the served complaint itself was not “proper” because of the district court’s “error” in granting leave for its service. But *GoPro* specifically rejects the “argument that only a ‘proper’ complaint—for example, a complaint filed by a party with standing—counts for § 315(b)’s time bar.” *GoPro* at 12 (citation omitted). *GoPro* explains that “limiting the application of § 315(b)’s time bar in this manner would require us to impose additional conditions onto the statute—something the Federal Circuit has already cautioned us against in [*Click-to-Call Techs., LP v. Ingenio, Inc.*, 899 F.3d 1321 (Fed. Cir. 2018) (en banc)].” *Id.*

In light of these considerations, we conclude that Petitioner has not shown that we abused our discretion in denying the Petition as time-barred.

III. ORDER

Accordingly, it is

ORDERED that Petitioner’s Request for Rehearing is *denied*.

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PETITIONER

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