

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
Petitioner,

v.

CENTRIPETAL NETWORKS, INC.,
Patent Owner.

Case IPR2022-00182
Patent No. 9,917,856

**PETITIONER’S PRELIMINARY REPLY TO PATENT OWNER’S
PRELIMINARY RESPONSE ADDRESSING THE ISSUE OF
DISCRETIONARY DENIAL UNDER § 314(a)**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PAN HAS A LEGITIMATE INTEREST IN PURSUING THIS IPR.....	1
III.	PO’S §314(a) ARGUMENTS LACK MERIT.....	2
IV.	PO’S REMAINING ARGUMENTS DO NOT SUPPORT DISCRETIONARY DENIAL	4
V.	CONCLUSION.....	5

I. INTRODUCTION

Patent Owner (“PO”)’s accusations of “gamesmanship and “harassment” are baseless. Petitioner Palo Alto Networks, Inc. (“PAN”) had and continues to have a legitimate reason for challenging the ’856 Challenged Claims—among them, PO’s expert’s testimony that PAN utilizes that technology. Furthermore, PO’s §314(a) arguments are factually and legally baseless. There is no basis for discretionary denial based merely on a prior Cisco litigation involving Cisco but not PAN. PAN and Cisco are direct competitors, and PAN has not worked with Cisco in preparing, filing, or pursuing this IPR.

II. PAN HAS A LEGITIMATE INTEREST IN PURSUING THIS IPR

PO’s allegations of “gamesmanship” and “harassment” to gain “settlement leverage” ignore PAN’s legitimate interest in filing the Petition. POPR, 1, 4, 34-35, 37-39, 45, 57. Petitioner is pursuing this IPR because the ’856 patent is part of a set of patents that have been asserted against others in the industry. More concretely, during trial in the Cisco litigation¹, PO’s expert on “valuation of Centripetal’s technology” testified that the “industry,” which includes “Palo Alto Networks,” “migrate[s] towards competing directly with Cisco.” PO’s expert further testified that “Palo Alto Networks” “specifically [has] sought to *imitate* the

¹ *Centripetal Networks, Inc. v. Cisco Systems, Inc.*, Case No. 2:18-cv-00094 (E.D. Va.), Dkt. No. 521, at 1573:3-8, 1625:2-28 (May 21, 2020 Trial Transcript).

Cisco solutions *that are described as infringing the patents in this suit*” (emphasis added), which patents included the ’856 patent, and specifically the Challenged Claims. PO has already accused PAN of infringing numerous patents from its portfolio in a pending district court action. PAN is under widespread threat of assertion from PO, and simply seeks to defend itself in view of PO’s (false) allegations that PAN is practicing these invalid Challenged Claims.²

III. PO’S §314(a) ARGUMENTS LACK MERIT

PO’s §314(a) arguments are based primarily on Cisco—but Cisco is a different party, and indeed PAN’s *direct competitor*, with no relevant relationship to PAN, let alone the “significant relationship” needed to support discretionary denial. The Board routinely declines to exercise discretionary denial in these circumstances because there is no “significant relationship.” *See, e.g., Netflix, Inc. v. Broadcom Corp.*, IPR2020-01423, Paper 7 at 5-6 (PTAB March 11, 2021) (declining to exercise discretionary denial after finding “no significant relationship

² PO’s other arguments alleging that Petitioner’s conduct reflects a motivation to harass also lack merit. PO’s argument about known evidence of objective indicia of nonobviousness (POPR, 36) is irrelevant and misleading. PO admits that the district court’s verdict was based on Cisco’s failure to prove invalidity (over different art than presented here) by clear and convincing evidence (POPR, 15), and not that any alleged objective indicia overcame the obviousness case. PO’s argument about failure to identify the claim element for Ground 2 is also baseless. The Petition clearly establishes the obviousness case for “rout[ing] the filtered packets to a proxy system,” which is directed to the last limitation of the Challenged Claims. Pet. 42-43, 47-49.

with the prior petitioner” where the parties are competitors); *Google LLC v. Uniloc 2017 LLC*, IPR2020-00396, Paper 11 at 11, 16-17 (PTAB Aug. 3, 2020) (same); *Mercedes-Benz USA, LLC v. Carucel Investments, L.P.*, IPR2019-01442, Paper 8 at 18 (PTAB March 3, 2020) (same). PAN and Cisco directly compete with separate products and were sued years apart.

PO’s cited evidence underscores the flailing nature of its argument. PO first argues that “Petitioner partners with Cisco” (POPR, 43), but the cited evidence is a PAN document explaining to customers how they can integrate PAN products into their existing Cisco Application Centric Infrastructure (ACI) (Ex. 2009). Helping customers to improve their existing Cisco-based infrastructure by using PAN products instead of Cisco products is competition, not partnership.³ PO next argues that a relevant relationship between PAN and Cisco is established because both companies are members of the Cyber Threat Alliance (CTA) (POPR, 44), but the CTA is an industry-wide non-profit membership organization with 34 private-sector members (Ex. 2008), most of which—like Cisco and PAN—are competitors. The organization’s mission is sharing information about *threats*, not collaboration on *products*. PO’s argument is analogous to treating members of the

³ *PayPal v. IOENGINE* is inapposite because that decision addressed a customer-supplier relationship, IPR2019-00885, Paper 21 at 11 (PTAB Oct. 3, 2019), which PAN and Cisco do not have.

same standard setting organization as the same party.

In addition, PAN acted independently in pursuing this IPR, and did not coordinate with Cisco or any other party.⁴ Ignoring that Cisco and PAN are direct competitors and did not coordinate this IPR, PO nonetheless argues that there is a “relationship” relevant to §314(a) under *General Plastic*. PO’s arguments misapply the relevant law and are factually incorrect.

IV. PO’S REMAINING ARGUMENTS DO NOT SUPPORT DISCRETIONARY DENIAL

PO’s remaining arguments do not support discretionary denial either. PO argues that there is a possibility of inconsistent results with an Article III court (POPR, 38), but the district court never considered the prior art references or issues that are presented in the Petition. PO further argues, in connection with *Fintiv*

⁴ PAN produced voluntary discovery to PO in this proceeding, and in IPR2021-01520 and -01521, establishing that: (1) there were no communications, written or oral, between PAN and any other entity relating to the financing, preparing, editing, review, approval, or filing of the IPRs; (2) no individuals acting for or on behalf of any other entity participated or assisted in any way with the financing, preparation, editing, review, approval, or filing of the IPRs; (3) there were no payments by any other entity to PAN in connection with the IPRs; and (4) no agreement exists between PAN and Cisco related to the challenged patents or any proceeding involving the challenged patents. In a teleconference on 2/10/2022, PO complained that the voluntary discovery was insufficient and asked the Board to grant a request to file a motion for additional discovery. The Board asked PO to narrow its discovery requests and to work out its differences with PAN. IPR2021-01520, Ex. 2047, at 28:5-29:2. But PO never did and instead abandoned its request for additional discovery—seemingly in recognition that any such additional discovery would only crystallize the record that there is no coordination between PAN and Cisco.

factors 4 and 6, that Buruganahalli failed to teach detecting threats in encrypted traffic without the use of decryption. POPR, 40-42, 44-45. Stated simply, the Challenged Claims do not rely on use of decryption to detect threats in encrypted traffic; nor does the Petition's mapping to Buruganahalli. That is, filtering based on the handshake processing of Buruganahalli—not decryption—is mapped to the claimed filtering limitations. Pet. 30-39. PO's argument pertaining to Figure 6 is just an attempt to mislead. POPR, 41. Decryption that *later* occurs in the proxy process of Buruganahalli—after the claimed filtering—is irrelevant to the claims.⁵ PO does not address the actual claim mappings as it cannot refute the art in any meaningful regard.

V. CONCLUSION

Discretionary denial is not appropriate based on *General Plastic*, *Fintiv* or PO's harassment allegations. PAN respectfully asks the Board to institute.

⁵ The only discussion of Buruganahalli's decryption in the claim chart is directed to proxy functionality at the claimed routing step, *not* the filtering step. Pet. 39-42. It is hardly distinguishing (or surprising) that the proxy employs known TLS/SSL encryption.

Respectfully submitted,

Dated: April 11, 2022

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing PETITIONER'S
PRELIMINARY REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE
ADDRESSING THE ISSUE OF DISCRETIONARY DENIAL UNDER § 314(a)
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