

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
U.S. Patent No. 9,917,856

PATENT OWNER'S PRELIMINARY SUR-REPLY

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I. INTRODUCTION

Petitioner's Reply¹ fails to establish a plausible non-harassment motivation for challenging the '856 Patent. Petitioner targeted this and other patents because of their role in the large damages award against Cisco, not because of its litigation with Patent Owner, which involves different patents. The Reply also mistakenly focuses on whether Centripetal established a "significant relationship" between Petitioner and Cisco, which is not a factor in the *Fintiv* analysis. The *Fintiv* factors weigh in favor of discretionary denial because the '856 Patent was already found patentable over art substantially similar to Buruganahalli.

II. PETITIONER'S GAMESMANSHIP AND HARASSMENT SUPPORT DISCRETIONARY DENIAL OF THE PETITION

Despite its request to brief the Board on its harassment of Centripetal, Petitioner ignores the vast majority of the evidence and arguments establishing that harassment. See Preliminary Response ("POPR") at 34-39. This case involves an administrative attack against an unasserted patent that raises substantially the same arguments already rejected by the district court, and Petitioner fails to explain how

¹ Petitioner's Reply does not comply with the Board's Order. Petitioner's single-spaced footnotes violate 37 C.F.R. § 42.6(a)(2)(iii) and the 5-page limit established in the Order permitting this briefing.

a case like this serves any desirable public policy. *See generally* Reply. It does not. A policy that places bounties on patents that have already survived validity challenges at district court can only be the seed for significant mischief, mischief which undermines Congress's recognition of "the importance of quiet title to patent owners to ensure continued investment resources." H.R. Rep. No. 112-98, pt. 1, at 48 (2011). That principle is particularly important in cases like this, where the patent has already proved patentable before a District Court Judge whose validity opinion was not appealed.

The conclusion that this IPR was calculated to harass Centripetal is inescapable. While Petitioner has challenged every claim of every patent that Centripetal *has* asserted against Petitioner, it has challenged only a subset of the '856, '176, and '193 Patents' claims, and those subsets just so happen to encompass the claims underlying the Cisco judgment. Collectively, Petitioner's pattern of targeted IPR Petitions challenging only patents asserted against Petitioner or those underlying the Cisco judgment leads to only one reasonable conclusion—that Petitioner seeks to harass Patent Owner and collaterally attack a district court judgment for purposes of gaining leverage in its own litigation with Patent Owner. That is not what Congress intended. POPR at 37–39.

Petitioner's argument that it has a legitimate interest in pursuing this IPR rings hollow because Centripetal has not asserted the '856 Patent against

Petitioner. See Reply at 1. Given this fact, Petitioner's citation to the testimony of Patent Owner's expert, Mr. Malackowski, does nothing to support Petitioner's speculation that it is under a threat of assertion. *Id.* at 1-2. Indeed, Mr. Malackowski did **not** make infringement accusations against Petitioner.

Centripetal Networks, Inc. v. Cisco Sys., Inc., No. 2:18-cv-00094, Dkt. 521, Trial Tr. at 1626:20-24 (E.D. Va.) ("I refer you to my report where . . . [PAN's] products are identified. ***None have been accused of infringement.***") (emphasis added).

Patent Owner's other arguments regarding Petitioner's harassment of Centripetal not only have merit but further warrant discretionary denial. See Reply at 2 n.2. The district court explicitly found that Cisco copied the '856 Patent's claimed technology, and evidence of copying is objective evidence of nonobviousness that a petitioner must address in the Petition. *Stryker Corp. v. KFX Med., LLC*, No. IPR2019-00817, Paper 10 at 27-29 (P.T.A.B. Sept. 16, 2019); see also *Liqwd, Inc. v. L'Oreal USA, Inc.*, 941 F.3d 1133, 1137 (Fed. Cir. 2019).

III. THE *FINTIV* FACTORS ALSO SUPPORT DISCRETIONARY DENIAL

Petitioner wrongly focuses its attack on *General Plastic* Factor 1 and its "significant relationship" factor because Patent Owner argued that the Petition should be denied pursuant to *Fintiv*, not *General Plastic*. Reply at 2-4. Under *Fintiv*, the Board considers any relationship between the parties, and even when

the parties are unrelated, the Board denies institution “if the issues are the same as, or substantially similar, to those already or about to be litigated” or if other circumstances factor against redoing the work of another tribunal. *Fitbit, Inc. v. Philips N. Am. LLC*, No. IPR2020-00828, Paper 13 at 13-16 (P.T.A.B. Nov. 3, 2020) (denying institution even though parties were different because petitioner presented substantially the same issues as presented in the district court litigation) (quoting *Apple Inc. v. Fintiv, Inc.*, No. IPR2020-00019, Paper 11 at 14 (P.T.A.B. Mar. 20, 2020)).

The Petition should, therefore, be denied because Buruganahalli is substantially similar to Cisco's old Stealthwatch product, which was overcome in district court. Just like the old Stealthwatch, Buruganahalli requires decryption for the detection of threats and cannot, therefore, “detect malware in encrypted traffic without any decryption,” as required by the “determining” and “filtering the determined packets comprising encrypted data” elements of the Challenged Claims. POPR at 40-42 (quoting Ex. 1027 at 62). After an encrypted session is identified, Buruganahalli's technique requires decrypting encrypted traffic and applying policies to the decrypted traffic. *Id.* at 46-49. Accordingly, because all packets to be filtered must be decrypted, Buruganahalli's technique is no different than the approach distinguished during prosecution and in the concluded district court litigation between Centripetal and Cisco.

The relationship between Petitioner and Cisco further weighs the *Fintiv* factors against the Board redoing the district court's work. Although Petitioner asserts that Cisco is a "direct competitor" (see Reply at 2-4), it explicitly touts the integration of its products with Cisco's, demonstrating that the companies' products are complementary and that, in at least some respects, the companies rely on each other to help their customers achieve a common goal. See Ex. 2009 at 1. Cisco also refers to Petitioner as a "Partner." See <https://developer.cisco.com/ecosystem/sdwan/partners/EX0010/>. And, as Petitioner willingly admits, Petitioner and Cisco have joined forces as charter members of an organization that encourages members to share information about threats rather than monopolize information to themselves. Reply at 3. This evidence shows that Cisco and Petitioner work together toward common goals when their interests are aligned.

Petitioner is litigating against Patent Owner in district court, and it has filed IPR petitions on the patents asserted in that litigation. On the other hand, Cisco, not Petitioner, is the only party with an interest in challenging the '856 Patent's validity. It already did so, failed, and declined to appeal the Judge's validity finding. The Board should, therefore, reject Petitioner's opportunistic, serial attack, which contravenes Congress's respect for quiet title and desire that patent owners remain free from harassment.

Patent Owner's Preliminary Sur-Reply
IPR2022-00182 (U.S. Patent No. 9,917,856)

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. 42.6(e), and pursuant to agreement by the parties that filing with the Board through the PTAB End 2 End system constitutes electronic service, service was made on Petitioner as detailed below.

<i>Date of service</i>	April 18, 2022
<i>Manner of service</i>	Electronic Filing with the Board
<i>Documents served</i>	PATENT OWNER'S PRELIMINARY SUR-REPLY
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