

From: [wg_tech](#) on behalf of [Webmaster](#)
To: [Precedential Opinion Panel Request](#)
Subject: Precedential Opinion Panel (POP) Amicus Request Form
Date: Friday, June 17, 2022 2:21:03 PM

Name = Kristen Osenga

Affiliation = University of Richmond School of Law

Client represented = none

Case number = IPR2022-00182

Case name = Palo Alto Networks, Inc.

Paper number = Paper 13

Type of amicus = Supporting POP Review

Brief description = I write to request the Board to convene a Precedential Opinion Panel to rehear Case # IPR2022-00182, Palo Alto Networks, Inc. v. Centripetal Networks, Inc. This case is similar, but distinct, from the case of OpenSky Indus., LLC v. VLSI Tech., LLC, Case # IPR2021-01064. In the OpenSky case, Director Vidal granted a sua sponte Director review due to “novel issues of law and policy.” The instant case presents similar novel issues of significant importance and the patent bar would benefit greatly from precedential guidance.

The issue in this case is whether the Office should exercise its discretion to deny institution of certain petitions filed subsequent to a patentee prevailing at district court. Since the beginning of the PTAB, the potential for the use of IPR proceedings to harass patent owners has been well-known. To counter this potential, the Office has the ability to exercise its discretion to institute these proceedings. In particular, the Board should issue guidance on whether to institute petitions that are a) filed by a party that has not been alleged to be infringing a patent subject to the petition and b) filed against a patent that is the basis of a district court judgment that is pending on appeal. In cases where both of these circumstances are true, the Office should have serious concerns that the petition was filed merely to harass a successful patentee. Add to this set of circumstances that, here, the petitioner is engaged in litigation with the patent owner and that litigation in

volves not the patents subject to the IPR petition but others, and the most likely explanation is that the petitioner is seeking to scatter the patent owner’s attention and resources.

To be sure, there may be instances where institution under these circumstances should not be categorically denied, but the Office should provide guidance to ensure that IPRs remain a tool to improve patent quality, not harass patent owners. In the absence of direction, it could easily become a defensive litigation tactic to file IPRs against—not the patents being asserted at trial, but others owned by the patent owner—simply to dilute the patent owner’s attention and resources. Especially where these unasserted patents are already the subject of extensive district court litigation and are still involved in pending appeals, the harms to the petitioner and the patent system are minimal, while the potential for harassment of the patent owner is great.

Relationship to a party to the proceeding = none

I certify that I am submitting this amicus form within seven business days of entry of the Notification of POP request into the case docket or patent application file = Yes

Signature = /KristenOsenga/

Troubleshooting information:
Remote Address: 10.206.16.74

IPR2022-00182
Ex. 3007

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