From: McKeown, Scott <Scott.McKeown@ropesgray.com>
Sent: Thursday, June 30, 2022 12:15 AM
To: Hannah, James
Cc: Precedential_Opinion_Panel_Request; Radsch, Andrew; bsilver@bannerwitcoff.com; bwright@bannerwitcoff.com; Batchelder, James R.; skelly@bannerwitcoff.com; Price, Jeffrey H.; Rowland, Mark D.; Fuller, Jenna
Subject: Re: Precedential Opinion Panel Review for IPR2022-00182

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Palo Alto Networks (PAN) strongly objects to the repeated and unauthorized argumentation provided to this email by Centripetal, but can no longer ignore this improper argumentation.

PAN challenged the patent in this proceeding because it is directly related to patents Centripetal been accused of infringing in the district court, includes overlapping claims/specification/terms, and Centripetal's expert explicitly accused PAN of infringing it. In rejecting the very same arguments Centripetal makes in its POP request, the panel credited these same facts. This dispute has nothing to do with the matters at issue in OpenSky.

That others are seeking to join the instituted proceeding, is unremarkable, and a straightforward application of the statute, 315(c).

Counsel for Palo Alto Networks

On Jun 29, 2022, at 11:22 PM, Hannah, James <JHannah@kramerlevin.com> wrote:

Your Honors,
Patent Owner, Centripetal Networks, wishes to inform the Precedential Opinion Panel that Cisco Networks and Keysight Technologies—both time-barred petitioners—have recently filed motions to join the above referenced IPR. Both petitioners were accused of infringing the '856 Patent in the past and instead opted to challenge validity in different forums despite being aware of the main prior art in this proceeding. Centripetal intends to file oppositions to the motions for joinder in the near future that relate to the currently pending POP rehearing request that will explain how the Board's decision to institute in this proceeding opens the door to such improper serial attacks on patents across multiple forums, contrary to the purpose of IPRs.

Respectfully,
James Hannah
Counsel for Centripetal Networks

James Hannah
Partner

Kramer Levin Naftalis & Frankel LLP
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IPR2022-00182
Ex. 3013

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From: Hannah, James <JHannah@KRAMERLEVIN.com>
Sent: Wednesday, June 8, 2022 5:56 PM
To: 'Precedential_Opinion_Panel_Request@uspto.gov' <Precedential_Opinion_Panel_Request@uspto.gov>
Cc: Radsch, Andrew <Andrew.Radsch@ropesgray.com>; 'bsilver@bannerwitcoff.com' <bsilver@bannerwitcoff.com>; bwright@bannerwitcoff.com; Batchelder, James R. <James.Batchelder@ropesgray.com>; 'skelly@bannerwitcoff.com' <skelly@bannerwitcoff.com>; Price, Jeffrey H. <JPrice@KRAMERLEVIN.com>; Rowland, Mark D. <Mark.Rowland@ropesgray.com>; McKeown, Scott <Scott.McKeown@ropesgray.com>; Fuller, Jenna <JFuller@KRAMERLEVIN.com>
Subject: Precedential Opinion Panel Review for IPR2022-00182

Your Honors,

Patent Owner, Centripetal Networks ("Centripetal"), has filed the attached request for rehearing of the Board's Institution decision and requests Precedential Opinion Panel review to address a question of exceptional importance

that threatens the integrity and fairness of the patent system. Based on my professional judgment, I believe this case requires an answer to the following precedent-setting questions of exceptional importance:

"Whether petitions filed substantially for the purpose of harassing patent owners who prevail in Article III courts, such as petitions targeting patents that have not been asserted against the petitioner but are the basis of district court judgments that are pending on appeal, should be discretionarily denied."

Director Vidal has already recognized the significant importance of similar issues by granting sua sponte Director rehearing of the institution decision in OpenSky Indus., LLC v. VLSI Tech. LLC, IPR2021-01064, -01229 to address discretionary denial of petitions filed substantially for the purpose of harassing patent owners who prevail in Article III courts.

Based on my professional judgment, I also believe the Board panel decision is contrary to the following provisions, statutes, or regulations: 35 U.S.C. § 314(a).

Based on my professional judgment, I also believe the Board panel decision is contrary to the following decision(s) of the Supreme Court of the United States, the United States Court of Appeals for the Federal Circuit, or the precedent(s) of the Board:

· Cuozzo Speed Techs., LLC v. Lee, 579 U.S. 261, 273 (2016)

· Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 218-19 (1995).

· Mylan Lab'ys Ltd. v. Janssen Pharmaceutica, N.V., 989 F.3d 1375, 1382 (Fed. Cir. 2021)

· Gen. Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha, IPR2016-01357, Paper 19, 16-17 (Sept. 6, 2017) (precedential)

* Apple Inc. v. Fintiv, Inc., IPR2020-00019, Paper 11, 6 (PTAB Mar. 20, 2020) (precedential)

Petitioner, Palo Alto Networks ("PAN"), filed its petition in the instant proceedings after Centripetal secured a significant district court judgment of willful infringement against Cisco. The district court in the Cisco case held a six-week trial, heard from 26 witnesses, and fully considered the validity of the patent at issue in these proceedings, namely the '856 Patent. So clear was that result that Cisco did not bother to appeal the court's judgment on validity. Nevertheless, this judgment is now in jeopardy because PAN, who has not been accused of infringing the '856 Patent, saw an opportunity to exploit vulnerability while the Cisco judgement is pending on appeal to gain advantage in an unrelated litigation.

Administrative attacks that follow a completed, intensive, and expensive trial undermine the AIA's goal to provide "quick and cost effective alternatives to litigation." H.R. Rep. No. 112–98, pt. 1, at 48 (2011). Allowing this Institution Decision to stand will only encourage other opportunistic petitioners with no direct interest in the patents at issue to abuse the IPR process, running up the cost of litigation rather than reducing it, and collaterally attacking eviscerating the finality of Article III judgments for purposes completely at odds with the goals of the IPR system.

IPRs are not tools for harassment. "Congress recognized the importance of protecting patent owners from patent challengers who could use the new administrative review procedures as 'tools for harassment'" via "'repeated litigation and administrative attacks on the validity of a patent.'" WesternGeco LLC v. ION Geophysical Corp., 889 F.3d 1308, 1317 (Fed. Cir. 2018) (quoting H.R. Rep. No. 112-98, pt. 1, at 48)); see also Letter from Kathi Vidal to Sens. Hirono and Tillis (May 27, 2022) (The IPR process should not be "abused by parties filing petitions in bad faith and for reasons outside the intent of the America Invents Act."). Congress granted the Director discretion to deny petitions as a powerful safeguard against opportunistic petitioners attempting to weaponize the IPR process. See H.R. Rep. No. 112-98, pt. 1, at 48 (encouraging "the USPTO to address potential abuses and current inefficiencies under its expanded procedural

authority”); Gen. Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha, IPR2016-01357, Paper 19, 16-17 (Sept. 6, 2017) (precedential) (recognizing “the potential for abuse of the review process by repeated attacks on patents”).

In order to ensure that the patent system works for its intended purpose, Centripetal respectfully request review by the Precedential Opinion Panel.

James Hannah
Counsel for Centripetal Networks

James Hannah
Partner

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