

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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PALO ALTO NETWORKS, INC.,  
Petitioner,

v.

CENTRIPETAL NETWORKS, INC.,  
Patent Owner.

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

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**AFFIDAVIT OF PAUL ANDRE UNDER 5 U.S.C. § 556(b) IN SUPPORT OF  
PATENT OWNER'S MOTION FOR RECUSAL AND VACATUR**

I, Paul Andre, Esq., being duly sworn and upon oath, hereby attest to the following:

1. I am a partner at the law firm Kramer Levin Naftalis & Frankel LLP, attorneys for the Patent Owner, Centripetal Networks, Inc. This affidavit is submitted in support of the motion that Administrative Patent Judge (APJ) Brian J. McNamara, as well as the entire APJ panel, be disqualified from participating in the final written decision or in any other action of this IPR proceeding.

2. On information and belief, each of Exhibits 2030-2035 is a true and correct copy of APJ McNamara's Public Financial Disclosure Reports (OGE Form 278e) for the report years spanning from 2015 to 2020, respectively. I received these documents on or about September 29, 2022. For the report years from 2015 to 2020, APJ McNamara disclosed that he owned stock in Cisco Systems, Inc. (stock symbol CSCO) in an amount valued between \$1,001 to \$15,000. *See* Ex. 2030, page 2; Ex. 2031, page 4; Ex. 2032, page 4; Ex. 2033, page 3; Ex. 2034, page 4; Ex. 2035, page 3.

3. For the report years from 2015 to 2020, APJ McNamara disclosed a continued financial arrangement with his former law firm Foley & Lardner, LLP, namely, a "[c]ontinued participation in earnings of firm as retired partner." Ex. 2031 at 6. APJ McNamara was paid by Foley & Lardner in amounts that varied each year between \$30,000 to \$60,000. *See* Ex. 2030, page 9; Ex. 2031, page 6 (disclosing

\$60,000 received in 2015); Ex. 2032, page 8 (disclosing \$60,000 received in 2015); Ex. 2033, page 7 (disclosing \$30,000 received in 2017); Ex. 2034, page 7 (disclosing \$50,000 received in 2018); Ex. 2035, page 7 (same).

4. In 2019, APJ McNamara served on each of the 14 Board panels deciding IPR petitions filed by Cisco against Patent Owner. See IPR2018-01386, -01436, -01437, -01443, -01444, -01454, -01505, -01506, -01512, -01513, -01559, -01654, -01655, -01760. Nine of these cases resulted in final written decisions finding at least one patent claim challenged by Cisco unpatentable. See IPR2018-01386 (FWD issued 1/23/2020), -01436 (FWD issued 1/23/2020), -01437 (FWD issued 1/23/2020), -01443 (FWD issued 2/11/2020), -01444 (FWD issued 2/11/2020), -01454 (FWD issued 3/5/2020), -01512 (FWD issued 3/19/2020), -01513 (FWD issued 3/31/2020), -01760 (FWD issued 5/18/2020). APJ McNamara, as lead judge on the panel, personally authored several of these institution and final written decisions. See IPR2018-01386, -01443, -01444, -1505, -01506, -01512.

5. Exhibit 2036 is a true and correct copy of an attorney profile page for APJ McNamara on the Foley & Lardner LLP website, as captured by the Internet Archive Wayback Machine on June 28, 2022.

6. Exhibit 2038 is a true and correct copy of an excerpt from a registered lobbyist report from the state of Florida for the reporting year 2019, available at

[https://floridalobbyist.gov/reports/2019\\_a\\_e.pdf](https://floridalobbyist.gov/reports/2019_a_e.pdf). Exhibits 2039-2041 are true and correct copies of Foley & Lardner LLP's lobbyist disclosures in the state of Wisconsin for the 2019-2020 and 2021-2022 Legislative Sessions, available at <https://lobbying.wi.gov/>. Foley & Lardner LLP represents Cisco in lobbying efforts and receives fees from Cisco. See Ex. 2037 at 15-16; Ex. 2038 (showing compensation to the Foley firm of about \$100,000-\$139,996); Exs. 2039-2041.

7. Below is a statistical analysis, produced at my direction, for *inter partes* review challenges directed at the patent portfolio of Patent Owner Centripetal Networks, Inc. for the last 4 years. The statistical analysis examined the institution decision outcomes when the Board panels did or did not include APJ McNamara and institution decisions issued before or after the district court judgment adverse to Cisco (*Centripetal Networks, Inc., v. Cisco Systems, Inc.*, Case No. 2:18-cv-00094-EWH-LRL (E.D. Va.)). Table 1 illustrates the overall institution rate compared with institution rates for panels that did and did not include APJ McNamara:

| All Cases            | Institution Decisions | Number Instituted | Institution Rate |
|----------------------|-----------------------|-------------------|------------------|
| Overall              | 32                    | 18                | 56.25            |
| With APJ McNamara    | 22                    | 16                | 72.73            |
| Without APJ McNamara | 10                    | 2                 | 20               |

Table 1

Table 2 illustrates the difference in institution rates for those cases decided before the Cisco judgment:

| Pre-Judgment  | Institution Decisions | Number Instituted | Institution Rate |
|---------------|-----------------------|-------------------|------------------|
| Overall       | 14                    | 9                 | 64.28            |
| With McNamara | 14                    | 9                 | 64.28            |
| Without       | 0                     | 0                 | N/A              |

Table 2

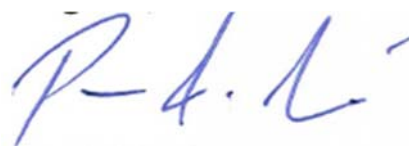
Table 3 illustrates the difference in institution rates for only those cases decided after the Cisco judgment:

| Post-Judgment        | Institution Decisions | Number Instituted | Institution Rate |
|----------------------|-----------------------|-------------------|------------------|
| Overall              | 18                    | 9                 | 50               |
| With APJ McNamara    | 8                     | 7                 | 87.5             |
| Without APJ McNamara | 10                    | 2                 | 20               |

Table 3

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code.

Executed this 30th day of December 2022, in Scottsdale, AZ.



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Paul Andre

**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 P-TACTS system constitutes electronic service, that service was made on Petitioner as detailed below.

|                          |                                                                                                             |
|--------------------------|-------------------------------------------------------------------------------------------------------------|
| <i>Date of service</i>   | December 30, 2022                                                                                           |
| <i>Manner of service</i> | Electronic Filing with the Board                                                                            |
| <i>Documents served</i>  | AFFIDAVIT OF PAUL ANDRE UNDER 5 U.S.C. § 556(B) IN SUPPORT OF PATENT OWNER'S MOTION FOR RECUSAL AND VACATUR |
| <i>Persons Served</i>    | ROPES & GRAY LLP:<br>Scott A. McKeown<br>Mark D. Rowland<br>James Batchelder<br>Andrew Radsch<br>Keyna Chow |

/Paul Andre/  
Paul Andre