

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC., CISCO SYSTEMS, INC.
and KEYSIGHT TECHNOLOGIES, INC.,
Petitioners,*

v.

CENTRIPETAL NETWORKS, LLC,
Patent Owner.

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

**PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW
OF THE DECISION GRANTING INSTITUTION TO CISCO**

*Cisco Systems, Inc. filed a petition and a motion for joinder in IPR2022-01151 and has been joined as a petitioner in this proceeding. Keysight Technologies, Inc. filed a petition and a motion for joinder in IPR2022-01199 and has been joined as a petitioner in this proceeding.

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I. INTRODUCTION

Centripetal respectfully asks the Director to grant Director Review and de-institute this proceeding because the petitions were filed and prosecuted in a manner that undermines the AIA's goals, the Board's decision failed to address whether petitions that collaterally attack Article III judgments thwart the AIA's goals, and it declined to evaluate evidence of copying, which is the same error that led the Federal Circuit to vacate the Final Written Decision that ultimately issued. Two discrete defects independently warrant Director Review, and current Office policy gives good cause for the Director to consider this Request.

First, the Board abused its discretion when it refused to consider whether administrative attacks filed on the heels of a district court verdict thwart the goals of the AIA, as required under Office precedent. Director Review is appropriate because the panel's reliance on a non-precedential decision stating that the AIA was meant to encourage meritorious challenges by any party simply sidestepped the abuse-of-process concerns raised pre-institution. Second, the Board abused its discretion in overlooking evidence of copying raised at the institution stage. After a full trial and appeal, the Federal Circuit agreed that the Board was not entitled to ignore evidence that Cisco copied the technology claimed in the '856 Patent, and that same deficiency afflicted all three Institution Decisions in this case.

Good cause exists for the Director to waive that deadline and substitute this Director Review Request for the pending Request for Rehearing. Director Review and de-institution are consistent with the Office's current policies, and the Cisco DI was signed and acted upon at a time when at least one signing APJ had signaled withdrawal, raising questions about whether discretionary acts were performed after a decision to recuse. De-institution would not prejudice any party to this proceeding because no party would face statutory IPR estoppel following de-institution, and de-instituting this case will be more efficient than allowing this case to proceed through another Final Written Decision and—regardless of the outcome—another appeal to Federal Circuit.

For these reasons, and for the reasons set forth below, Centripetal requests Director Review of the Cisco Institution Decision and de-institution of this proceeding.

II. FACTS

Filed in 2015, the '856 Patent is part of a portfolio of patents covering technology that Centripetal presented to Cisco in a series of meetings and disclosures. Cisco then cut ties with Centripetal, copied its technology, and congratulated itself for “solving a ‘network security challenge previously thought to be unsolvable,’” detecting malware in malicious traffic without decryption. IPR2022-01199, Paper 11 (“-01199 POPR”) at 3, 16-17 (citing Ex. 1027, 63-64).

After Cisco's copying stripped Centripetal of its technical advantage in the marketplace, Centripetal was forced to assert its patents against its competitors.

In 2018, Centripetal asserted the '856 Patent against Keysight. During this litigation, Keysight identified **Buruganahalli** (the only consequential reference in this case) in its invalidity contentions and produced claim charts purporting to map **Buruganahalli's** disclosures to the claims of the '856 Patent. -01199, Exs. 2002, 2008. Keysight did not file any petitions for *inter partes* review of the patents asserted in that litigation, and after four days of trial, Keysight licensed the asserted patents, including the '856 Patent. -01199 Paper 8 at 2-3 (citing Ex. 2004).

Centripetal also asserted the '856 Patent against Cisco in 2018. During discovery, Centripetal disclosed Keysight's invalidity contentions and claim charts, including Exs. 2002 and 2003 to Cisco. IPR2022-01151, Paper 10, POPR at 31. And although Cisco filed IPR petitions against most of the patents asserted in the parties' litigation, it did not challenge the '856 Patent. *Id.* at 2. After presiding over a six-week trial, Judge Morgan returned a judgment finding no invalidity and willful infringement of the '856 Patent. Paper 6 ("POPR") at 14. This decision was later vacated on appeal because Judge Morgan learned that his wife owned less than \$5,000 of stock in Cisco, and his choice to place the investment in a blind trust to avoid any appearance of impropriety was deemed insufficient under the relevant

statute. Paper 48 at 3. Despite beginning in 2018, the case between Centripetal and Cisco remains stayed on the eve of re-trial in view of this proceeding.

On November 18, 2021, after the judgment against Cisco but before that judgment was vacated, Palo Alto Networks, Inc., (“PAN”) filed the underlying Petition. Paper 2 (“PAN Petition” or “Pet.”). The PAN Petition was one of three petitions challenging patents underlying the Cisco judgment but not asserted against PAN. Paper 11, Institution Decision at 15. The other two similarly-situated petitions were denied institution. *Id.* at 16.

The Board instituted trial in this this case, and Centripetal timely requested rehearing and consideration by the POP panel, raising three distinct issues, including whether the Board should “entertain IPR petitions that collaterally attack a district court judgment when the totality of the circumstances indicates that the petition was filed to harass the patent owner.” Paper 13 at 2. Centripetal’s request generated several amicus briefs filed in its favor. *See* Exs. 3006-3010. Centripetal also argued that the Board failed to (1) consider evidence that Cisco copied the ’856 Patent and (2) hold PAN to its duty to address known objective indicia of non-obviousness in its Petition. Paper 13 at 14-15.

On December 6, 2022, nearly six-months after Centripetal filed its Rehearing Request, the Precedential Opinion Panel denied the Rehearing Request without opinion and ordered the “original panel” to “consider[] the submitted rehearing

request.” Paper 31, 2. In its Decision Denying Centripetal’s Request for Rehearing, the panel noted, but did not address, Centripetal’s harassment argument. Paper 40 (PAN Rehearing Decision) at 2-3. The panel did address Centripetal’s argument that it erroneously ignored evidence of copying and maintained its position that it could not evaluate the evidence of record because the record evidence was less than “all of the evidence about copying cited by the district court.” *Id.* at 14. This was the very reasoning that caused the Federal Circuit to vacate the panel’s Final Written Decision. *Centripetal v. Palo Alto Networks*, 156 F.4th 1368 (Fed. Cir. 2025).

The Board decided the PAN Rehearing Decision on the same day, January 4, 2023, that it instituted trial on the petitions filed by Cisco and Keysight and joined those otherwise time-barred parties to the case. Papers 40, 39, 41. All three of these decisions were signed by an APJ who had also decided to withdraw no later than that day. Paper 43, 2 n.4. Another member of the panel withdrew less than two weeks later. Paper 47. Centripetal timely requested rehearing of the Board’s decisions to institute trial on the Cisco and Keysight petitions. Papers 48, 49. The Board did not fully act on those rehearing requests until it issued the now-vacated Final Written Decision, so those requests remain pending.

III. ARGUMENT

A. The Board Abused its Discretion at Institution

1. *The Director Should De-Institute to End the Harassment*

The Director should grant Director Review because the Board overlooked or did not address arguments that raised “legitimate questions about whether the petition is reasonably designed to advance the beneficial aims of the AIA or this Office and whether, in addition, the filing amounts to an abuse of process.” *OpenSky Indus., LLC v. VLSI Tech. LLC*, No. IPR2021-01064, Paper 102 at 36 (Vidal, Oct. 4, 2022) (precedential); *see also Pat. Quality Assurance, LLC v. VLSI Tech. LLC*, No. IPR2021-01229, Paper 102 at 2 (Vidal, Dec. 22, 2022) (precedential) (addressing “questions of first impression as to what actions the Director . . . should consider when addressing allegations of abuse of process or conduct that otherwise **thwarts the goals** of the” AIA) (emphasis added).

Congress designed a system that was meant to provide parties with a “quick and cost effective alternative[] to litigation.” H.R. Rep. No. 112-98, pt. 1, at 48 (2011). To say that that goal has been thwarted in this case is an understatement. Despite beginning in 2018, the litigation between Centripetal and Cisco over the ’856 Patent remains pending solely because the Board instituted trial in this case, which was brought by an unrelated third-party not accused of infringement. Instead of being a “cost effective alternative[] to litigation,” it has been a costly adjunct that has achieved nothing but delay Centripetal’s access to justice and the marketplace.

No goal of the AIA suggests that Congress meant for the Board to act as a *de facto* appellate body to review Article III judgments. Immediately subjecting adjudicated patents to potential cancellation in an AIA proceeding undermines the finality of the judicial process and creates a shadow court that doubles as a Court of Appeals but with an open evidentiary record and a more favorable standard of review. -01199 POPR at 28-30. Rather than ensuring that IPRs are “not to be used as tools for harassment or a means to prevent market entry through repeated *litigation and administrative attacks* on the validity of a patent,” such challenges promise to put a cloud over every patent judgment. *Id.* at 30. Far from “address[ing] potential abuses and current inefficiencies under its expanded procedural authority,” collateral attacks on Article III judgments thwart nearly every goal that Congress set in the AIA. *Id.* And so it has gone in this case: Cisco copied and implemented Centripetal’s technology nearly ***ten years ago***, effectively excluding Centripetal from the market while continuing to profit from its technology.

That the Board applies a more lenient standard of proof than the district court, and third-party petitioners have access to arguments, evidence, and judicial opinions stemming from district court challenges only make the filing of such post-judgment challenges more problematic. In this case, PAN had access to the parties’ arguments and the Judge’s opinion from the Cisco case before filing its Petition. It also repurposed Keysight’s claim charts concerning **Buruganahalli** after Keysight and

Cisco passed up opportunities to file IPR petitions challenging the '856 Patent and proceeded to trial on other, self-described, better grounds. -01151 Cisco Pet. at 25.

Accordingly, while “there is nothing *per se* improper about a petitioner who is not a patent infringement defendant filing an IPR petition,” the Director still must consider whether such a petition advances or thwarts the goals of the AIA. *Pat. Quality*, Paper 102 at 2, 47. In this case, the Board sidestepped the question, citing a non-precedential decision stating that “the ‘AIA was designed to encourage the filing of meritorious patentability challenges, by any person who is not the patent owner, in an effort to further improve patent quality.’” Paper 39 (“Cisco DI”) at 41 (citation omitted). The Board’s failure to balance this general goal against the “surrounding circumstances” violates the precedential *PQA* opinion. *Pat. Quality*, Paper 102 at 47.

Centripetal respectfully requests Director Review of the Cisco Institution Decision and de-institution of the proceeding because collateral attacks on Article III judgments thwart the goals of the AIA.

2. *The Director Should De-Institute the Proceedings Because the Board Failed to Consider Evidence of Copying, as Affirmed by the Federal Circuit*

The Director should review the Cisco Institution Decision in this case and de-institute the proceeding because the Board abused its discretion in declining to consider evidence of copying at institution. -01199 POPR at 3, 16-17; Paper 11,

PAN DI at 78 (stating with no further analysis that Centripetal “does not identify information allowing [the Board] to evaluate whether copying occurred”). As the Federal Circuit has confirmed, the Board’s approach was wrong from the very start. *Centripetal Networks*, 156 F.4th at 1380 (“Turning to the merits of the appeal, we conclude that the Board erred by not properly considering evidence of copying.”).

Just as the Board abused its discretion for not considering evidence of copying in the Final Written Decision, it also abused its discretion when declining to consider that evidence at institution. *Id.* at 1381 (“Enroute to a conclusion on obviousness, a court must not stop until all pieces of evidence on that issue have been fully considered and each has been given its appropriate weight. . . . It is error to exclude that evidence [on secondary considerations] from consideration.”) (quoting *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1539 (Fed. Cir. 1983)). The Director should, therefore, vacate the Institution Decision and de-institute the proceedings.

De-institution is appropriate in this circumstance because it was Petitioners’ burden to address any **known** objective indicia of non-obviousness in the first instance. *Stryker Corp. v. KFx Med., LLC*, No. IPR2019-00817, Paper 10 at 27-29 (P.T.A.B. Sept. 16, 2019); *Robert Bosch Tool Corp. v. SD3, LLC*, No. IPR2016-01751, Paper 15 (P.T.A.B. Mar. 22, 2017) (collecting Board decisions denying petitions for a Petitioner’s failure to address known objective indicia of non-

obviousness). The Board even cited *Stryker* approvingly in the Cisco Institution Decision. Cisco DI at 50. On the same day, however, the Board **denied** rehearing of the PAN Institution Decision where Centripetal argued that “the Board improperly gave PAN a pass for not addressing the objective indicia of nonobviousness of which it was aware.” Paper 13 at 15 (citing *Stryker*). The Decision Denying Centripetal's Request for Rehearing of the PAN Institution Decision was arbitrary and capricious because it did not mention *Stryker*, let alone explain why it did not compel denial. *See generally* Paper 40.

Respectfully, the Board's reliance on *Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1360 (Fed. Cir. 2007) for the proposition that the “patentee has the burden of going forward with rebuttal evidence” was misplaced. Cisco DI at 50-51. Although objective evidence is often entered and considered “in terms of a ‘prima facie’ case which must then be ‘rebutted’ by the patentee,” in reality there is no “formal burden-shifting framework.” *In re Cyclobenzaprine*, 676 F.3d 1063, 1076-77 (Fed. Cir. 2012). Instead, objective evidence “is to be considered as part of all the evidence, not just when the decisionmaker remains in doubt after reviewing the art.” *Id.* at 1076 (quoting *Stratoflex*, 713 F.2d at 1538-39).

In this framework, **known** objective evidence of non-obviousness is not rebuttal evidence, it is evidence that a Petitioner **must** address to make out a *prima facie* case of obviousness satisfying the *Graham* factors. *In re Cyclobenzaprine*, 676

F.3d at 1077. Thus, while objective evidence of non-obviousness typically enters a case when a patentee seeks to rebut one or more contentions made by a patent challenger, known objective considerations are not rebuttal evidence and are, indeed, not “secondary” in any way. *Id.* at 1078 (“Notably, the Court did not characterize the objective factors as after-the-fact considerations or relegate them to ‘secondary status.’”). The Director should de-institute because Petitioners did not meet their burden to address this evidence in the Petitions, and the Board did not meet its obligation to address it at institution.

B. Good Cause Supports Centripetal's Request to Withdraw its Pending Request for Rehearing and Substitute this Director Review Request

1. *Current USPTO Policy Weighs in Favor of the Director Granting Director Review*

Good cause exists for the Director to withdraw the pending Rehearing Request and grant Director Review of the Cisco Institution Decision because current USPTO policies are consistent with the relief requested.

Under the Office's “settled expectations” policy, the entire industry was on notice of the '856 Patent when it was publicly asserted against Cisco on March 29, 2018, only two weeks after it issued. Then, the industry's expectations that the '856 Patent was valuable and valid should have been settled as soon as Keysight licensed the '856 Patent mid-trial (on October 9, 2018) and no later than the Cisco case concluded with a finding of willful infringement on March 17, 2021. *See Alliance*

Laundry Sys., LLC v. Payrange LLC, No. IPR2025-00950, Paper 11 at 3 (Stewart, Sept. 19, 2025) (informative) (finding settled expectations when the subject patent was previously licensed). And while PAN's petition was filed when the '856 Patent was only three-years old, it strategically delayed filing its IPR petition until after the Cisco verdict, and after Cisco and Keysight did not "seek early review." *iRhythm Techs., Inc., v. Welch Allyn, Inc.*, No. IPR2025-00363, Paper 10 at 3 (Stewart, June 6, 2025) ("Petitioner's awareness of Patent Owner's applications and failure to seek early review of the patents favors denial and outweighs the above-discussed considerations.").

Additionally, the Office has ended the practice of (1) permitting time-barred parties from joining instituted proceedings absent exceptional circumstances,¹ (2) permitting the same APJs to decide Institution and Final Written Decisions,² and (3) assigning APJs to panels when the APJ has any financial interest in a party.³

¹ *Realtek Semiconductor Corp. v. ParkerVision, Inc.*, No. IPR2025-00324, Paper 11 at 3 (Stewart, June 25, 2025) (precedential).

² *Memorandum: Director Institution of AIA Trial Proceedings*, https://www.uspto.gov/sites/default/files/documents/Director_Institution_of_AIA_Trial_Proceedings.pdf.

³ *Memorandum: Guidance on Paneling of Cases* at 2,

Centripetal does not suggest that the Director must apply these policies to decide the merits of the Director Review Request, but the fact that Centripetal was not afforded these protections establishes good cause for the Director to grant and consider this Director Review Request in the first place.

2. *The Institution Decision Was Signed by a Judge on the Eve of Recusal*

Good cause also exists because the Decision Denying Rehearing was signed by at least one judge who had already decided to recuse himself from the case. *Shell Oil Co. v. United States*, 672 F.3d 1283, 1291 (Fed. Cir. 2012) (when a judge decides to recuse himself from a case, he “may take no action other than the ministerial acts necessary to transfer the case to another judge”) (quoting *United States v. O’Keefe*, 128 F.3d 885, 891 (5th Cir. 1997)). There is, therefore, good cause for the Director to grant Director Review because entering an institution decision is a “discretionary act, not a ministerial act.” *Id.* at 1290-91 (quoting *O’Keefe*, 128 F.3d at 891); *Cuozzo*

<https://www.uspto.gov/sites/default/files/documents/panelingmemo-09222023.pdf>

(“I am directing PTAB and TTAB management (Board management) to avoid empaneling cases to judges who hold stock or bonds (publicly traded or privately held) in any of the disclosed parties or real parties in interest, regardless of the dollar value.”).

Speed Techs., LLC v. Lee, 579 U.S. 261, 273 (2016) (“And the agency’s decision to deny a petition is a matter committed to the Patent Office’s discretion.”).

To be clear, Centripetal respects the Federal Circuit’s decision and does not suggest that either of the APJs who ultimately withdrew from the proceedings were bound by law to recuse. *Centripetal*, 156 F.4th 1368. Regardless of the reason for recusal, however, the law prohibits a judge from performing discretionary acts, like instituting an AIA trial, once the judge has decided to recuse. In this case, at least one of the APJs had already decided to recuse himself from the matter on the same day that he performed discretionary acts that redounded to the benefit of Cisco. Paper 43 at 2 n.4 (“Cisco was joined to this proceeding earlier today.”).

C. De-Institution Would Not Prejudice Petitioners

Granting Director Review and de-instituting this case would not prejudice Petitioners. If this case is de-instituted, no party would face IPR estoppel. Accordingly, although Centripetal has never asserted the ’856 Patent against PAN, nothing would preclude PAN from raising all defenses permitted by law if and when it is accused. As for Cisco and Keysight, both knew of **Buruganahalli** during their respective one-year periods for requesting *inter partes* review under 35 U.S.C. § 315(b), and both parties chose not to request IPR. See Section II, *supra*. Keysight licensed the ’856 Patent during trial, and Cisco is poised to present its self-

proclaimed “best” invalidity defense to the district court as soon as this case concludes. -01199 POPR at 15; -01151 Cisco Pet. at 25.

D. The Director Has Authority to Rehear the Decisions Denying Centripetal's Requests for Rehearing of the Institution Decision and De-institute the Proceeding

The Director has authority to grant Director Review and de-institute this proceeding. *In re Vivint, Inc.*, 14 F.4th 1342, 1351 (Fed. Cir. 2021) (“[T]he Patent Office has the authority to reconsider IPR institution decisions.”); *see also GTNX, Inc. v. INTTRA, Inc.*, 789 F.3d 1309, 1313 (Fed. Cir. 2015)). The Director's authority to reconsider an IPR institution decision includes the authority to de-institute a proceeding after the patent owner's period for requesting rehearing of the institution decision has expired. *Sling TV, L.L.C. v. Realtime Adaptive Streaming LLC*, 840 F. App'x 598, 598-99 (Fed. Cir. 2021) (non-precedential). This authority extends to de-instituting a proceeding that otherwise meets all of the statutory requirements for *inter partes* review. *BioDelivery Scis. Int'l, Inc. v. Aquestive Therapeutics, Inc.*, 935 F.3d 1362, 1367 (Fed. Cir. 2019).

IV. CONCLUSION

For at least the foregoing reasons, Director Review should be granted and the case should be de-instituted.

Respectfully submitted,

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(Case No. IPR2022-00182)

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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 Patent Trial and Appeal Case Tracking System (P-TACTS) constitutes electronic service, that service was made on the Petitioner as detailed below.

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<i>Manner of service</i>	Electronic Mail and Electronic Filing with the Board
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