

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,

Petitioner,

v.

CENTRIPETAL NETWORKS, INC.

Patent Owner.

Case IPR2022-01151
Patent No. 9,917,856

**PETITIONER’S REPLY IN SUPPORT OF MOTION FOR JOINDER
UNDER 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.23, AND 42.25(a)**

Joinder should be granted. Petitioner Cisco Systems, Inc (“Cisco”) challenges the same claims of the ’856 patent on the same grounds as the Palo Alto Networks (“PAN”) IPR and will act as an understudy to PAN or, if PAN no longer participates, coordinate with the Board and any other joined parties to identify a new lead petitioner (which may be Cisco). Paper 3, Mot. at 3-4; *see* IPR2022-01099, Paper 3. Substantial public interest supports the Office reaching a final decision, and Centripetal’s arguments based on a vacated district court decision are unavailing. *See* Paper 3, Mot. at 9-10; EX1104, 25.

I. CISCO’S PETITION DOES NOT INTRODUCE NEW ISSUES

Centripetal argues, incorrectly, that Cisco has presented a “new issue” in its Petition related to “evidence of objective indicia of nonobviousness from the Cisco judgment.” Paper 8, Opp. at 4. This assertion is incorrect and irreconcilable with the history of the PAN IPR, where Centripetal made alleged objective indicia a pre-institution issue. *See* IPR2022-00182, Paper 6 at 53-57. In a remarkable display, Centripetal even accused PAN of failing to sufficiently address the issue in PAN’s petition, even though “Petitioner [PAN] does not have access to such [objective indicia] evidence.” IPR2022-00182, Paper 2 at 50. Centripetal now reverses course, arguing that by addressing the objective indicia evidence, Cisco allegedly introduces a “new issue.” Paper 8, Opp. at 4; *see* IPR2022-00182, Paper 6 at 56-57. (“... petitions may be denied if they do not address known evidence of

secondary considerations.”). Centripetal cannot have it both ways. The Board’s nonbinding precedent supports Cisco addressing known evidence. *See Stryker Corp. v. KFX Med., LLC*, No. IPR2019-00817, Paper 10 at 27-29 (PTAB Sept. 16, 2019) (“failure to address the known evidence... favor[s]... denying institution.”).

Ultimately, Centripetal will choose whether to make secondary considerations an issue in the trial phase of the PAN IPR. *WMS Gaming, Inc. v. Int’l Game Tech.*, 184 F.3d 1339, 1359 (Fed. Cir. 1999) (“patentee bears the burden” to show secondary considerations). The contents of Cisco’s Petition have no bearing on whether objective indicia will be at issue in the trial Cisco seeks to join.

The cases cited by Centripetal are inapposite. *Windy City* addresses “joinder of new issues material to patentability, such as new claims or new grounds”—neither of which applies here. *Facebook, Inc. v. Windy City Innovations, LLC*, 953 F.3d 1313, 1322 (Fed. Cir. 2020). *In re Leithem* addresses the circumstance where the Board presented “a new ground of rejection” based on “new facts and rationales not previously raised,” and the applicant did not have opportunity “to respond to the new rejection.” *In re Leithem*, 661 F.3d 1316, 1319 (Fed. Cir. 2011); *In re NuVasive, Inc.*, 841 F.3d 966, 971-72 (Fed. Cir. 2016) (same). Nothing in the cited cases suggests that a motion for joinder should be denied here.

II. CENTRIPETAL’S IRRELEVANT STATEMENTS

Centripetal presents numerous characterizations of unrelated Keysight

litigation, which the Board should disregard as irrelevant to the present proceeding. Paper 8, Opp. 1-3. Additionally, Centripetal’s arguments based on the district court’s now-vacated decision—and the decision itself, EX1027—should be disregarded and given no weight. *See* Paper 8, Opp. *generally*. The Federal Circuit’s order—whose mandate has issued—requires the district court to “decide the case **without regard for the vacated opinions and orders.**” EX1104, 25 (emphasis added); EX1105; *see also* Paper 2, Pet., 73-74. The Board should do the same.

Even if the Board were to ignore the Federal Circuit’s order and consider the district court’s vacated decision, Centripetal’s assertions are inaccurate. For example, Centripetal asserts that vacating the district court’s “decision was unrelated to the merits, and [that] Cisco did not challenge or appeal the judge’s validity determinations.” Paper 8, Opp. at 3. In fact, Cisco disagreed with the district court’s determination and appealed the decision *in its entirety*. Ex.1028, 64-67. The Federal Circuit agreed with Cisco and vacated the district court’s entire opinion because the court’s conflict of interest presented “a substantial risk that [the judge] might bend over backwards to rule against” Cisco on the merits. EX1104, 23, 26-27. Cisco will continue arguing for the claims to be held invalid (subject to Cisco’s *Sotera* stipulation—*see* Paper 2 at 22).

III. JOINDER IS IN THE PUBLIC INTEREST

Centripetal does not dispute that it has intimated that “other industry

participants allegedly infringe the '856 patent” and that there is substantial public interest in “permitting full and free competition in the use of ideas which are in reality a part of the public domain.” *Lear, Inc. v. Adkins*, 395 U.S. 653, 670 (1969). Paper 2, Pet. at 24-26; Paper 3, Mot. 9-10. Rather, it merely presents hollow assertions of alleged harassment premised on the irrelevant and vacated district court’s decision. Paper 8, 5-8; EX1104, 23, 26-27. The Board should follow its decision in the PAN IPR and decline to “deny institution based on harassment.” IPR2022-00182, Paper 11 (Institution Decision), 20-21.

IV. ONE YEAR TIME BAR UNDER § 315(b) DOES NOT APPLY

Centripetal attempts, inappropriately, to suggest that Cisco “is indisputably time-barred under 35 U.S.C. § 315(b).” Paper 8, Opp. at 8-9. Quite the contrary, “the one-year time bar [under 35 U.S.C. § 315(b)] does not apply to a request for joinder.” *Microsoft Corp. v. Proxyconn Inc.*, IPR2013-00109, Paper 15 at 4 (PTAB Feb. 25, 2013); *see also Teva Pharm. Indus., Ltd. v. Allergan, Inc.* IPR2017-00579, Paper 9 at 5 (PTAB Mar. 31, 2017); 35 U.S.C. § 315(b). Moreover, Centripetal’s contention that Cisco “passed over Buruganahalli (and the chance to file any IPR)” is incorrect. Paper 8, Opp. at 2-3, 8-9. Centripetal served its complaint on March 29, 2018, putting the one-year bar date on March 29, 2019. EX2005. Only after the one-year bar date, on Nov. 19, 2019, did Centripetal serve any document that mentioned Buruganahalli. EX2007. Cisco did not pass over Buruganahalli in

determining whether to file an IPR.

V. *FINTIV* SUPPORTS JOINDER

Centripetal contends that *Fintiv* Factors 1-3 favor “deny[ing] institution of Cisco’s joinder motion” because “trial has already concluded” and the parties have “already invested enormous resources.” Paper 8, Opp. at 11. This cursory assertion, which does not apply a proper *Fintiv* framework for Factors 1-3, must fail. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5-6 (PTAB Mar. 20, 2020) (precedential). Centripetal also ignores that the new judge may “grant a new trial”—meaning that the trial has not concluded and that the parties are just beginning to incur associated expenses. *See* EX1104, 19 n.13, 27.

As to *Fintiv* Factors 4-6, Centripetal’s assertion that there is “overlap of issues” ignores Cisco’s *Sotera* stipulation, which mitigates any such concerns. Paper 8, Opp. at 12-14; Paper 2, Pet. at 22-23; Director Vidal’s Memorandum on Interim Procedure for Discretionary Denials, at 7-8. Furthermore, Centripetal’s argument regarding “weakness of the merits” ignores the Board’s recognition that the merits are “particularly strong.” Paper 8, Opp. at 12-14; Paper 2, Pet. at 24; IPR2022-00182, Paper 11, 21, 29-30. In such circumstances, the Board “should not discretionarily deny institution under *Fintiv*.” Director Vidal’s Memorandum on Interim Procedure for Discretionary Denials, at 4-5.

Respectfully submitted,

Dated: August 22, 2022
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UPDATED LIST OF EXHIBITS (AUGUST 21)

EX1001	U.S. Patent No. 9,917,856 (“’856”)
EX1002	File History of U.S. Patent No. 9,917,856 (“’856 FH”)
EX1003	Declaration of Dr. Jon Weissman in Support of <i>Inter Partes</i> Review of U.S. Patent No. 9,917,856 (“Weissman”)
EX1004	U.S. Patent No. 9,680,795 (“Buruganahalli”)
EX1005	U.S. Patent No. 5,878,231 (“Baehr”)
EX1006	<i>Reserved</i>
EX1007	Barry M. Leiner et al., “A Brief History of the Internet,” Internet Society, 1997, available at: https://www.internetsociety.org/internet/history-internet/briefhistoryinternet/ (“Leiner”)
EX1008	U.S. Pat. No. 7,032,031 (“Jungck ’06”)
EX1009	E. H. Spafford, “The Internet Worm Program: An Analysis,” Purdue Technical Report CSD-TR-823, 1988. (“Spafford”)
EX1010	Eichin, M.W. and Rochlis, J.A., “With Microscope and Tweezers: The Worm from MIT’s Perspective,” Communications of the ACM, Volume 32 Number 6, June 1989 (“Eichin”)
EX1011	T. Eisenberg et al., “The Cornell Commission: On Morris and the Worm,” Communications of the ACM, Volume 32 Number 6, June 1989 (“Eisenberg”)
EX1012	J. C. Mogul, “Simple and Flexible Datagram Access Controls for Unixbased Gateways,” Digital Western Research Laboratory Technical Report No. 89/4, 1989 (“Mogul”)

EX1013	“FireWall-1 User Interface from 3.0,” PhoneBoy’s Security Theater, archived at the Internet Archive Wayback Machine on January 2, 2014 at https://web.archive.org/web/20140102143305/http://phoneboy.net/ (“FireWall-1”)
EX1014	“SonicWALL Global Management System: Centralized Network Monitoring and Management Solution”, 2008, archived at the Internet Archive Wayback Machine on December 7, 2008 at https://web.archive.org/web/20081207003303/http://www.sonicwall.com/downloads/EC_GMS_DS_US.pdf (“SonicWALL GMS”)
EX1015	“SonicWALL ViewPoint 6.0 Administrator’s Guide”, 2010, archived at the Internet Archive Wayback Machine on August 21, 2010 at https://web.archive.org/web/20100821022839/http://www.sonicwall.com:80/downloads/SonicWALL_ViewPoint_6_0_Admin_Guide.pdf (“SonicWALL ViewPoint”)
EX1016	Heberlein, L. T.L, et al., “A Network Security Monitor,” Proceedings, 1990 IEEE Computer Society Symposium on Security and Privacy, 1990 (“Heberlein”)
EX1017	“NetRanger Network Security Management System User Guide”. v1.3.1 Wheelgroup Corporation, 1997 (“NetRanger”)
EX1018	Roesch, M., “Snort: Lightweight Intrusion Detection for Networks,” Lisa (Vol. 99, No. 1, pp. 229-238), 1999 (“Roesch”)
EX1019	U.S. Pat. No. 8,370,936 (“Zuk”)
EX1020	W32.hllw.Doomjuice Technical Description, Symantec Security Center, updated February 13, 2007, available at: https://www.symantec.com/security-center/writeup/2004020909-2916-99 (“Doomjuice”)

EX1021	“(Vendor Issues Fix) Re: Helix Universal Server and RealServer URL Parsing Flaw in View Source Plug-in Lets Remote Users Execute Arbitrary Code with Root Privileges” Security Tracker, September 13, 2003, available at: https://securitytracker.com/id/1007692 (“Helix”)
EX1022	“Transmission Control Protocol,” IETF RFC 793. J. Postel, ed., September 1981, archived at Internet Archive Wayback Machine on February 2, 2007 at https://web.archive.org/web/20070202201546/https://tools.ietf.org/html/rfc793 (“RFC 793”)
EX1023	“Internet Protocol,” IETF RFC 791, J. Postel, ed., September 1981, archived at Internet Archive Wayback Machine on February 4, 2007 at https://web.archive.org/web/20070204151303/https://tools.ietf.org/html/rfc791
EX1024	“File Transfer Protocol,” IETF RFC 765, J. Postel, ed., June 1980, archived at Internet Archive Wayback Machine on February 6, 2007 at https://web.archive.org/web/20070206005843/https://tools.ietf.org/html/rfc765 (“RFC 765”)
EX1025	T. B. Lee, “The Original HTTP as defined in 1991,” World Wide Web Consortium, 1991, archived at Internet Archive Wayback Machine on June 5, 1997 at https://web.archive.org/web/19970605071155/https://www.w3.org/Protocols/HTTP/AsImplemented.html (“T.B. Lee”)
EX1026	<i>Cisco System Inc. v. Centripetal Networks, Inc.</i> , IPR2018-01760, Paper 41 (PTAB May 18, 2020)
EX1027	<i>Centripetal Networks, Inc. v. Cisco Systems, Inc.</i> , Case No. 2:18-cv-00094 (E.D. Va.), Dkt. No. 621 (Opinion and Order Regarding Findings of Fact and Conclusions of Law)

EX1028	<i>Centripetal Networks, Inc. v. Cisco Systems, Inc.</i> , Case 2021-1888 (Fed. Cir.), Dkt. No. 18 (Non-Confidential Brief for Defendant-Appellant Cisco Systems, Inc.)
EX1029	<i>Centripetal Networks, Inc. v. Cisco Systems, Inc.</i> , Case No. 2:18-cv-00094 (E.D. Va.), Dkt. No. 548 (June 10, 2020 Trial Transcript)
EX1030	<i>Centripetal Networks, Inc. v. Keysight Techs., Inc.</i> , Case No. 2:17-cv-383 (E.D. Va.), Dkt No. 484 (“Keysight Markman”)
EX1031	S. Turner & C. Polk, “Prohibiting Secure Sockets Layer (SSL) Version 2.0,” IETF RFC 6176, March 2011, archived at Internet Archive Wayback Machine on March 18, 2011 at https://web.archive.org/web/20110318184421/https://tools.ietf.org/html/rfc6176 (“Turner”)
EX1032	I. Ristic, “SSL/TLS and PKI History,” April 2018, available from https://www.feistyduck.com/ssl-tls-and-pki-history/ (“Ristic”)
EX1033	U.S. Pat. Appl. Pub. No. 2007/0271605 (“Le Pennec”)
EX1034	U.S. Patent No. 8,504,822 (“Wang”)
EX1035	U.S. Patent No. 7,793,342 (“Ebrahimi”)
EX1036	J. Wack et al., <i>Guidelines on Firewalls and Firewall Policy</i> , National Institute of Standards and Technology (“NIST”)
EX1037	U.S. Patent No. 8,813,228 (“Magee”)
EX1038	<i>Reserved</i>
EX1039	<i>Reserved</i>
EX1040	U.S. Patent Appl. Pub. No. 2014/0283004 (“Moore”)

EX1041	U.S. Patent Appl. Pub. No. 2015/0207809 (“Macaulay”)
EX1042	U.S. Patent Appl. Pub. No. 2014/0089661 (“Mahadik”)
EX1043	U.S. Patent No. 7,849,502 (“Bloch”)
EX1044	U.S. Patent No. 7,584,352 (“Boivie”)
EX1045	Young-Ho Kim, et al., <i>Design of Firewall in Router using Network Processor</i> , IEEE (Jul. 11, 2005) (“Kim”)
EX1046	Declaration of Jonathan Bradford
EX1047- EX1099	<i>Reserved</i>
EX1100	Patent Owner’s Trial Exhibit 464 (PTX-464) admitted by Patent Owner in <i>Centripetal Networks, Inc. v. Cisco Systems, Inc.</i> , Case No. 2:18-cv-00094 (E.D. Va.), EX-1029 (3217:20-3223:6).
EX1101	Patent Owner’s Trial Exhibit 1135 (PTX-1135) admitted by Patent Owner in <i>Centripetal Networks, Inc. v. Cisco Systems, Inc.</i> , Case No. 2:18-cv-00094 (E.D. Va.), e.g., EX-1029 (3216:8-3217:19, 3233:12-3235:2); EX-1027, pp. 63-64, 137-139, 151-152.
EX1102	<i>Centripetal Networks, Inc. v. Cisco Systems, Inc.</i> , Case No. 20-1635, Centripetal’s Opening Brief, filed July 10, 2020.
EX1103	<i>Centripetal Networks, Inc. v. Cisco Systems, Inc.</i> , Case No. 2:18-cv-00094 (E.D. Va.), Dkt. No. 521 (May 21, 2020 Trial Transcript).
EX1104	<i>Centripetal Networks, Inc. v. Cisco Systems, Inc.</i> , Case No. 21-1888, slip op. (Fed. Cir. June 23, 2022).
EX1105 (<i>New</i>)	<i>Centripetal Networks, Inc. v. Cisco Systems, Inc.</i> , Case No. 21-1888, Mandate (Fed. Cir. Aug. 1, 2022).

CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. § 42.6(e) and 37 C.F.R. § 42.105, service was made on Patent Owner as detailed below.

Date of service August 22, 2022

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Documents served Reply in Support of Motion for Joinder 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.23, and 42.25(a); Petitioner's Updated Exhibit List; Exhibit EX1105.

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