

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Keysight Technologies, Inc.,

Petitioner,

v.

Centripetal Networks, Inc.,

Patent Owner.

Case IPR2022-01199

Patent No. 9,917,856

PETITIONER'S REPLY IN SUPPORT OF
MOTION FOR JOINDER

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I. INTRODUCTION

Centripetal argues Keysight’s Motion for Joinder should be denied (1) as harassing; (2) as time-barred; or (3) discretionarily under *Fintiv*. Each argument fails. First, far from being harassing, the Board recognized the challenge Keysight seeks to join is “particularly strong.” IPR2022-00182, Paper 11 at 30. Moreover, Centripetal has previously asserted the ‘856 patent against Keysight and has filed additional patent lawsuits against Keysight in 2022. Denying Keysight’s motion to join a strong petition would undercut the goal of balancing improving patent quality against potential for abuses.

Second, the one-year bar is inapplicable to joinder motions. Centripetal relies on decisions addressing the bar in the context of self-joinder or delay between IPR petitions in *General Plastic* analyses. Those decisions are inapt, however, because this is Keysight’s *first* petition challenging the ‘856 patent.

Third, Centripetal’s *Fintiv* arguments fare no better. The compelling merits of the IPR alone overcome those arguments. Further, even if the Board were to entertain Centripetal’s arguments and cited authority, they do not provide a basis to deny joinder, where, as here, Keysight, seeks to take an understudy role.

II. ARGUMENT

A. Centripetal’s “Harassment” Allegations Are Misplaced

Centripetal’s harassment argument ignores that the AIA was designed to “improve patent quality and restore confidence in the presumption of validity that

comes with issued patents” and to “screen out bad patents while bolstering valid ones.” *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 272 (2016) (citations omitted). Rather than harassing, the Board recognized the petition in the underlying IPR as “particularly strong.” IPR2022-00182, paper 11 at 20. The Board has granted joinder of similar understudy petitions that would otherwise be time-barred (Mot. at 13), and insulating a dubious patent from IPR based on unsupported allegations of harassment would contradict the AIA’s goals.

Centripetal’s unsupported claim that “industry giants have teamed up” to challenge its patent and attempt to liken Keysight’s joinder motion to *OpenSky* issues also go nowhere. Opp. at 7. Keysight did not collaborate with PAN or Cisco to support their challenges of the ‘856 patent. Further, unlike the issues in *OpenSky*, the Board’s institution decision found that PAN expressed “reasonable concern that Patent Owner may initiate additional litigation involving the ‘856 patent.” IPR2022-00182, paper 11 at 20. Keysight likewise has an interest in challenging the ‘856 patent because Centripetal *has accused* Keysight of infringing the patent, and has filed patent lawsuits against Keysight in 2022. Mot. at 13. Consistent with the AIA’s purpose, the Board should grant joinder to ensure a meritorious IPR challenge advances to a final decision.

B. Keysight’s Motion for Joinder Is Not Time Barred

Keysight’s motion for joinder was timely filed within one month of institution

of the underlying IPR. Mot. at 4. Centripetal does not argue otherwise. Instead, Centripetal lifts analysis out of context from inapposite decisions to argue for discretionary denial of joinder. Opp. at 8-10. Keysight’s motion, however, does not raise the issues that weighed against joinder in those cases.

For instance, Centripetal relies on *Proppant Express Invs. v. Oren Techs.*, which answered the question: “Does the existence of a time bar under 35 U.S.C. § 315(b), or any other relevant facts, have any impact on” whether “a petitioner may be joined to a proceeding in which it is already a party” or “joinder of new issues into an existing proceeding.” IPR2018-00914, Paper 38 at 3 (P.T.A.B. Mar. 13, 2019) (emphasis added).¹ Here, in contrast, Keysight does not seek self-joinder or issue-joinder.

Similarly, Centripetal relies on *Code2000 v. Bright Data, Ltd.*, but that case is likewise distinguishable. Indeed, there, the Board recognized the basic principle established in other precedent that “a one-year bar does not apply to joinder under § 315(b).” IPR2021-01503, Paper 13 at 8 (P.T.A.B. Mar. 14, 2022). However, the

¹ Centripetal’s citations to the Consolidated Trial Practice Guide (CTPG) at 76-77 likewise address the time bar in the context of whether the Board has discretion to “join a petitioner to a proceeding in which it is already a party and to allow joinder of new issues into an existing proceeding.” CTPG at 76-77 (emphasis added).

petitioner had asserted invalidity counterclaims in a district court action which it dismissed *with prejudice*, and the Board therefore found that joinder was not warranted “in view of the specific facts of this case.” *Id.* In contrast, Keysight has not dismissed counterclaims against Centripetal with prejudice.

HTC Corp. v. Ancora also does not support Centripetal’s cause. IPR2021-00570, Paper 17 at 12-13 (P.T.A.B Jun. 10, 2021). Centripetal cites to the Board’s analysis of the 4-year delay between petitions filed by HTC under *General Plastic*. *Id.*, at 12-13. Unlike that case, *General Plastic* is irrelevant here because this is Keysight’s *first* petition for IPR of the ‘856 patent; this is not a follow-on petition. Mot. at 10. *Apple Inc. v. Uniloc 2017, LLC* is likewise irrelevant because it addressed whether to discretionarily deny joinder of a petitioner’s *second* petition under *General Plastic*. IPR2020-00854, Paper 9 at 4 (P.T.A.B. Oct. 28, 2020).²

C. The *Fintiv* Factors Do Not Favor Discretionary Denial

The “compelling merits” of this challenge make discretionary denial improper

² Centripetal’s assertion that Keysight opted to forego IPR in favor of proceeding to district court trial (Opp. at 9) does not change the fact that the one-year bar is inapplicable to this joinder motion. Mot. at 4. It also ignores the reality that Centripetal added the ‘856 patent to that case less than 4 months before trial (Mot. at 3), which effectively prevented Keysight from filing an IPR before trial.

(Mot. at 12), and Centripetal's *Fintiv* arguments cannot change that. Further, the issue here is whether to allow joinder as an understudy, not whether to conduct a completely separate trial so the *Fintiv* concerns are inapplicable. Because PAN's IPR was instituted and will be going forward regardless of whether joinder is granted, efficiency and integrity of the system are best served by granting joinder. *AT&T Services Inc. v. Broadband iTV, Inc.*, IPR2021-00556, Paper 14 at 12 (P.T.A.B. Aug. 25, 2021) (declining to deny institution under *Fintiv* and granting joinder for understudy role). Centripetal's cited cases are inapposite. *Apple Inc. v. Unwired Planet Int'l Ltd.*, IPR2020-00642, Paper 15 at 6-7 (P.T.A.B. Sept. 9, 2020) (not addressing joinder); *Amazon.com, Inc. v. Vocalife LLC*, IPR2020-00864, Paper 22 at 9-11 (P.T.A.B. Oct. 29, 2020) (same). Further, the '856 patent is not asserted in pending suits against Keysight so there is no parallel litigation against Keysight raising *Fintiv* concerns, the Cisco trial was vacated and no new trial is scheduled (Mot. at 12, n.4), and Centripetal's arguments about the merits of the underlying challenge (Opp. at 11-13) are irrelevant to the joinder analysis, and contradicted by the Board's institution decision.

III. CONCLUSION

Keysight's motion to join a substantively identical IPR petition should be granted to allow Keysight to protect its interests if PAN were to cease participation in the pending IPR.

Dated: August 22, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. § 42.6(e), the undersigned certifies that the foregoing Petitioner's Reply In Support Of Motion For Joinder was served on Patent Owner today by email.

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