

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,

Petitioner

v.

ORCKIT CORPORATION, LLC,

Patent Owner

IPR2023-00401

U.S. Patent No. 7,545,740

**PETITIONER'S AUTHORIZED REPLY
TO PATENT OWNER'S PRELIMINARY RESPONSE**

Discretionary denial under the *Fintiv* factors is not warranted despite the newly published time-to-trial statistics. When the petition was filed, the most recently published time-to-trial statistics (from June 2022) indicated that “the projected trial date is ‘around the same time or after’ the Board’s expected final written decision.” Petition, 81. Patent Owner cites statistics published more recently, which predict a trial less than seven months before an expected final written decision in this IPR. POPR, 48. The change in a predicted trial date has only a modest impact on the evaluation of *Fintiv* factor 2.

Factor 2 is also not generally given heavy weight in the overall *Fintiv* analysis. The Board has instituted cases with greater time differentials between trial date and final written decision than are currently predicted here. For example, in *Microsoft Corp. v. WSOU Investments, LLC*, the Board instituted trial with a nine-month differential between the trial date and expected final written decision. In doing so, the Board utilized a “balanced assessment of all relevant circumstances in the case, including the merits.” IPR2021-00930, Paper 8, 6 (Dec. 2021). Similarly, in *PEAG LLC v. Varta Microbattery GmbH*, the Board instituted trial despite a seven-month time differential, stating that “Petitioner makes a strong showing on the merits.” IPR2020-01214, Paper 8, 19-20 (Jan. 2021). Considering factor 2 in a balanced assessment of all relevant circumstances as presented in the Petition, the PTAB should not deny institution under *Fintiv*.

Respectfully submitted,

Date: July 14, 2023

HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Customer No. 27683

/Theodore M. Foster/
Theodore M. Foster
Counsel for Petitioner
Registration No. 57,456

PETITIONER'S EXHIBIT LIST

Ex.1001	U.S. Patent No. 7,545,740 to Zelig et al.
Ex.1002	Prosecution History of U.S. 7,545,740
Ex.1003	Declaration of Dr. Henry Houh under 37 C.F.R. § 1.68
Ex.1004	<i>Curriculum Vitae</i> of Dr. Houh
Ex.1005	U.S. Patent Publication No. 2004/0228278 to Bruckman et al.
Ex.1006	U.S. Patent Publication No. 2003/0210688 to Basso et al.
Ex.1007	Digital Logic Design, by Holdsworth ("Holdsworth") (2002)
Ex.1008	U.S. Patent No. 6,943,580 to Lewis et al. ("Lewis")
Ex.1009	IEEE Standard Dictionary of Electrical and Electronics Terms, (1984)
Ex.1010	RFC 1042, A Standard for the Transmission of IP Datagrams over IEEE 802 Networks
Ex.1011	C++ Inside & Out, by Bruce Eckel ("Eckel") (1993)
Ex.1012	Complaint, <i>Orckit Corporation v. Cisco Systems, Inc.</i> , Civil Action No. 2:22-cv-276-JRG-RSP (E.D. Tex, Jul. 22, 2022)
Ex.1013	Federal Court Statistics
Ex.1014	Proposed Docket Control Order, <i>Orckit Corporation v. Cisco Systems, Inc.</i> , Civil Action No. 2:22-cv-276-JRG-RSP (E.D. Tex, Dec. 2, 2022)
Ex.1015	Infringement Contentions, <i>Orckit Corporation v. Cisco Systems, Inc.</i> , Civil Action No. 2:22-cv-276-JRG-RSP (E.D. Tex, Nov. 3, 2022)
Ex.1016	Affidavit from the Internet Archive
Ex.1017	U.S. Patent No. 7,271,993 to Plojhar ("Plojhar")

Petitioner's Reply to Patent Owner's Preliminary Response
IPR2023-00401 (U.S. Patent 7,545,740)

Ex.1018	RFC 793, Transmission Control Protocol
Ex.1019	RFC 2026, The Internet Standards Process – Revision 3
Ex.1020	U.S. Patent No. 5,960,428 to Lindsay et al. (“Lindsay”)
Ex.1021	U.S. Patent No. 5,999,538 to Haddock et al. (“Haddock”)
Ex.1022	Course Catalog for Electrical Engineering
Ex.1023	Copyright Record for Eckel (Ex.1011)
Ex.1024	U.S. Patent No. 6,473,424 to DeJager (“DeJager”)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Cisco Systems, Inc.	§	Petition for <i>Inter Partes</i> Review
Petitioner	§	
	§	U.S. Patent 7,545,740

CERTIFICATE OF SERVICE

The undersigned certifies, under 37 C.F.R. § 42.6, that service was made on the Patent Owner as detailed below.

Date of service July 14, 2023

Manner of service Electronic Email: jim@carmichaelip.com;
stevemcbride@carmichaelip.com;
Orckit-IPRs@carmichaelip.com

Documents served Petitioner's Authorized Reply to Patent Owner's Preliminary Response.

Persons served James T. Carmichael
Stephen McBride
CARMICHAEL IP, PLLC
8000 Towers Crescent Drive, 13th Floor
Tysons, VA 22182

/Theodore M. Foster/
Theodore M. Foster
Counsel for Petitioner
Registration No. 57,456