UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,

Petitioner

v.

ORCKIT CORPORATION, LLC,

Patent Owner

IPR2023-00402
U.S. Patent No. 8,830,821

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, 86. 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, 36. 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

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PETITIONER'S EXHIBIT LIST

Ex.1001	U.S. Patent No. 8,830,821 to Cohn et al.
Ex.1002	Prosecution History of U.S. 8,830,821
Ex.1003	Declaration of Dr. Henry Houh under 37 C.F.R. § 1.68
Ex.1004	*Curriculum Vitae* of Dr. Houh
Ex.1005	U.S. Patent Publication No. 2004/0205239 to Doshi et al. ("Doshi")
Ex.1006	"Definitive MPLS Network Designs," by Guichard et al., Cisco Press, 2005 ("Guichard")
Ex.1007	U.S. Patent Publication No. 2003/0117950 to Huang ("Huang")
Ex.1008	"MATE: MPLS Adaptive Traffic Engineering" by Elwalid et al., IEEE, 2001
Ex.1009	"Traffic Engineering with MPLS," by Osborne et al., Cisco Press, 2003
Ex.1010	"Fast Network Re-optimization Schemes for MPLS and Optical Networks" by Bhatia et al., 2006
Ex.1011	RFC3209
Ex.1012	Complaint, *Orckit Corporation v. Cisco Systems, Inc.,* 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, *Orckit Corporation v. Cisco Systems, Inc.,* Civil Action No. 2:22-cv-276-JRG-RSP (E.D. Tex, Dec. 2, 2022)
Ex.1015	Infringement Contentions, *Orckit Corporation v. Cisco Systems, Inc.,* Civil Action No. 2:22-cv-276-JRG-RSP (E.D. Tex, Nov. 3,

	2022)
Ex.1016	U.S. Patent Publication No. 2008/0155257
Ex.1017	U.S. Patent No. 7,624,142
Ex.1018	U.S. Patent Publication No. 2006/0015781
Ex.1019	Definitive MPLS Network Designs Guichard, Copyright Public Record(s)
Ex.1020	Definitive MPLS Network Designs Guichard, Library of Congress Record(s)
Ex.1021	Internet Archive Capture of Amazon.com, Definitive MPLS Network Designs (Guichard)
Ex.1022	RFC3272
Ex.1023	"Multiprotocol Label Switching (MPLS) Traffic Engineering," Cisco IOS Release 12.0(5)
Ex.1024	IETF "Multiple Metrics for Traffic Engineering with IS-IS and OSPF," Fedyk et al.
Ex.1025	U.S. Patent Publication No. 2011/0141877 to Xu et al., ("Xu")
Ex.1026	U.S. Patent No. 5,699,403 to Ronnen ("Ronnen")
Ex.1027	RFC2026
Ex.1028	U.S. Patent No. 8,102,774
Ex.1029	U.S. Patent Publication No. 2007/0201513
Ex.1030	RFC3469
Ex.1031	U.S. Patent No. 6,980,906
Ex.1032	U.S. Patent No. 7,502,884

Ex.1033	U.S. Patent No. 7,197,418
Ex.1034	U.S. Patent Publication No. 2006/0250948
Ex.1035	U.S. Patent Publication No. 2007/0047469
Ex.1036	U.S. Patent Publication No. 2006/0291391

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Cisco Systems, Inc. Petitioner	§ § §	Petition for *Inter Partes* Review U.S. Patent 8,830,821

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.

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