

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KEYSIGHT TECHNOLOGIES, INC.,
Petitioner,

v.

CENTRIPETAL NETWORKS, LLC,
Patent Owner.

Case IPR2023-00445

U.S. Patent No. 10,785,266

PETITIONER'S PRELIMINARY REPLY TO PATENT OWNER'S
PRELIMINARY RESPONSE ADDRESSING THE ISSUE OF
DISCRETIONARY DENIAL UNDER § 314(a)

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PETITIONER’S EXHIBIT LIST

Exhibit No.	Description
Ex. 1001	U.S. Patent No. 10,785,266 (“’266 Patent”)
Ex. 1002	File History of U.S. Patent No. 10,785,266
Ex. 1003	Declaration of Dr. Doug Jacobson In Support for <i>Inter Partes</i> Review Petition for U.S. Pat. 10,785,266
Ex. 1004	<i>Curriculum Vitae</i> of Dr. Doug Jacobson
Ex. 1005	U.S. Patent Pub. 2011/0072506 (“Law”)
Ex. 1006	U.S. Patent Publication No. 2007/0097976 (“Wood”)
Ex. 1007	Declaration from Nathaniel E. Frank-White, attaching Feb. 2, 2007 Assurent website printout regarding its Vulnerability Research Service (VRS), <i>available at</i> https://web.archive.org/web/20070202094127/http://www.assurent.com:80/index.php?id=58 (“Assurent VRS”)
Ex. 1008	U.S. Patent Pub. 2009/0262741 (“Jungck”)
Ex. 1009	Listing of claims of the ’266 Patent
Ex. 1010	Complaint filed in <i>Centripetal Networks, Inc. v. Keysight Technologies, Inc.</i> , Case No. 2:22-cv-00002
Ex. 1011	Affidavit of service of complaint filed in <i>Centripetal Networks, Inc. v. Keysight Technologies, Inc.</i> , Case No. 2:22-cv-00002
Ex. 1012	INTERIM PROCEDURE FOR DISCRETIONARY DENIALS IN AIA POST-GRANT PROCEEDINGS WITH PARALLEL DISTRICT COURT LITIGATION (June 21, 2022)
Ex. 1013	European Patent Application 3 550 795 A1 (“the ’795 patent”)

TABLE OF ABBREVIATIONS

Term	Abbreviation
Petitioner Keysight Technologies, Inc.	Keysight
Patent Owner Centripetal Networks, LLC	PO
Patent Owner’s Preliminary Reply, Paper 7	POPR
Palo Alto Networks, Inc.	PAN

I. Keysight Does Not Have A “Significant Relationship” With PAN

PO argues that the first *General Plastic* factor favors denying institution based on an alleged relationship between Keysight and PAN. POPR at 9-12. PO relies on the Board’s precedential decision in *Valve Corp. v. Electronic Scripting Products, Inc.*, IPR2019-00062, Paper 11 (PTAB Apr. 2, 2019), but the asserted relationship here is nothing like the one in *Valve*.

Valve involved co-defendants in the same litigation that were accused of infringing the same patent based on a single set of products. *Valve*, Paper 11 at 9-10. The first petitioner sold the accused products, which incorporated technology licensed from the second petitioner. *Id.* These facts created a relationship between the petitioners that the Board found to be “significant” *Id.*

In contrast, here, Keysight and PAN have no relationship whatsoever, let alone a significant one. They independently offer their own respective networking products, which PO separately accused of infringement in different, staggered lawsuits. *Compare* IPR2021-01154, Ex. 1031 (PO’s Mar. 12, 2021 complaint against PAN) *with* Ex. 1010 (PO’s Jan. 1, 2022 complaint against Keysight). Thus, unlike in *Valve*, Keysight and PAN are not co-defendants in the same litigation, nor are their accused products related to one another. Moreover, Keysight and PAN did not coordinate in any way in preparing their respective IPR petitions. PAN acted independently of Keysight in its IPR petition, which was filed on July

6, 2021, long before PO even asserted the ’266 patent against Keysight. Likewise, Keysight acted independently in pursuing this IPR, with no assistance from PAN.

In cases like this, with no relationship between the current and prior petitioners, factor 1 strongly weighs against discretionary denial:

We find *General Plastic* **factor 1 weighs strongly against discretionary denial** of the Petition. Petitioner and AMD are not “co-defendants” in the same District Court litigation and are not accused of infringement for making, using, or selling the same products. Rather, they are unrelated parties who have been separately sued for making, using, or selling different accused products.

Qualcomm Inc. v. Monterey Research LLC, IPR2020-01491, Paper 10 at 10 (PTAB Mar. 8, 2021) (emphasis added); *see also Sony Mobile Comms. AB v. Ancora Tech., Inc.*, IPR2021-00663, Paper 17 at 10-11 (PTAB June 10, 2021); *Apple, Inc. v. UUSI, LLC d/b/a Nartron*, IPR2019-00358, Paper 12 at 14–15 (PTAB Aug. 5, 2019); *Google LLC v. Uniloc 2017 LLC*, IPR2020-00396, Paper 11 at 10-11, 16-17 (PTAB Aug. 3, 2020); *Mercedes-Benz USA, LLC v. Carucel Investments, L.P.*, IPR2019-01404, Paper 12 at 10-12 (PTAB Jan. 22, 2020).

Despite the lack of any relationship between Keysight and PAN, PO urges the Board to find an “implicit relationship” based on PO’s contention that Keysight used PAN’s IPR as a “roadmap.” POPR at 9-12. Factually, PO is incorrect that Keysight used PAN’s IPR as a roadmap. The grounds in Keysight’s IPR petition are based on Law, whereas the grounds in PAN’s IPR petition were based on Jungck. *Toshiba Am. Info. Sys. v. Wallelex Microelectronics Ltd.*, IPR2018-01538,

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Paper 11 at 20 (PTAB Mar. 5, 2019) (finding no roadmap where “[t]he asserted grounds in the current Petition are based on different prior art”).

PO does not contend that Keysight copied any portion of PAN’s IPR. Rather, PO’s roadmap allegations are based on the unremarkable fact that Keysight explained in detail why Law discloses or renders obvious each limitation of the independent claims of the ’266 patent, which necessarily include the “all network traffic traversing the boundary” and “entire boundary” limitations found to be missing in Jungck. POPR at 10. In contrast, each decision cited by PO as finding a roadmap involved a later petitioner incorporating content from the prior IPRs, modified to address deficiencies. *See Ericsson Inc. v. Uniloc 2017, LLC*, IPR2019-01550, Paper 8 at 12 (PTAB Mar. 17, 2020) (finding roadmap where the petitioner “us[ed] the prior petitioners’ work as a menu and pick[ed] and choos[e] from their work product.”); *Samsung Elecs. Co. v. Elm 3DS Innovations, LLC*, IPR2017-01305, Paper 11 at 9-12 (PTAB Oct. 17, 2017) (petitioner relied on substantially the same grounds as prior IPR, merely swapping out one of three secondary references); *United Fire Protection Corp. v. Eng’d Corrosion Solutions, LLC*, IPR2018-00991, Paper 10 at 12 (PTAB Nov. 15, 2018) (finding petition “presents many issues and arguments ... that also are present in the [prior] IPR”).

In addition to being factually incorrect, PO is legally incorrect that an “implicitly created . . . relationship” like the one alleged here should be treated as

“significant” under *Valve*. See *Volkswagen Group of America, Inc. v. Neo Wireless LLC*, IPR2022-01537 Paper 8 at 9-11 (PTAB May 5, 2023) (rejecting argument that road-mapping allegations gave rise to a significant relationship); *Micron Tech. v. Netlist, Inc.*, IPR2022-00418, Paper 14 at 10-11 (PTAB Sept. 1, 2022) (same). Moreover, PO’s reliance on *Mitek Sys., Inc. v. United Servs. Auto. Assoc.*, IPR2020-01101, Paper 29 (PTAB Jan. 26, 2021) is unavailing. There, the second petitioner had a “significant and meaningful” relationship with the first petitioner in view of a “customer-supplier relationship ... involving software directly implicated in the district court case” with the prior petitioner. *Id.* at 22.

II. The Remaining Factors Are Neutral Or Support Institution

Given the absence of any relationship between Keysight and PAN, the remaining *General Plastic* factors need not be considered, but if they are, they are neutral or support institution. *Volkswagen*, IPR2022-01537, Paper 8 at 11 (“*General Plastic* factors 1, 2, 4, and 5 weigh against discretionary denial” in view of the lack of a “significant relationship” between petitioners); *Western Digital Corp. v. SPEX Tech., Inc.*, IPR2018-00084, Paper 14 at 17 (PTAB Apr. 25, 2018) (“Because Petitioner has not previously filed a petition against the same patent, factors 2–5 bear little relevance in this case.”); *Sony*, IPR2021-00663, Paper 17 at 11-15 (factors 2-5 weigh strongly in favor of institution in view of absence of significant relationship between petitioners). Regarding factor 3, as explained

above, Keysight did not use the PAN IPR as a roadmap, and, in any event, any relevance of factor 3 is “mitigated” by PO’s “staggered assertions” of the ’266 patent. *Volkswagen*, IPR2022-01537, Paper 8 at 11-12; *Apple*, IPR2019-00358, Paper 12 at 16-17. Keysight diligently conducted a search for prior art to the ’266 patent once PO brought suit, and any benefit Keysight derived from having the institution decision on PAN’s IPR at the time it filed its petition is the result of PO’s delay in filing suit. *Apple*, IPR2019-00358, Paper 12 at 17-19 (factors 4-5 weigh against exercising discretion to deny institution, despite petitioner “wait[ing] a full year after being sued before filing the instant Petition,” because the prior IPR “papers were already available when Petitioner was sued by Patent Owner”).

Lastly, PO’s contentions that opposition proceedings regarding EP Pat. No. 3550795 have any impact on the *General Plastic* analysis, or had any impact on Keysight’s IPR petition, are baseless. POPR at 7-8, 15. Contrary to PO’s representations, the ’795 patent is **not** a related patent—it claims priority to US Pat. No. 9,565,213 (POPR at 8 n. 4), which is a different patent family. *See* Ex. 1001, 1-2 (’266 patent not claiming priority to ’213 patent). Moreover, the ’795 patent has a different specification, recites different claims, recites two inventors not found on the ’266 patent, and, of course, is subject to different law. *See* Ex. 1013. The opposition proceedings regarding the ’795 patent had zero influence on Keysight’s IPR petition. PO’s unsupported speculation to the contrary is baseless.

Respectfully submitted,

Date: May 30, 2023

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CERTIFICATE OF SERVICE

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, the undersigned certifies that filing the foregoing **PETITIONER’S PRELIMINARY REPLY TO PATENT OWNER’S PRELIMINARY RESPONSE ADDRESSING THE ISSUE OF DISCRETIONARY DENIAL UNDER § 314(a)** on P-TACTS today, which constitutes service on the following Patent Owner’s representatives:

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