

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARISTA NETWORKS, INC.,
Petitioner,

v.

CORRIGENT CORPORATION,
Patent Owner.

IPR2023-00515

Patent No.7,330,431

PATENT OWNER'S PRELIMINARY RESPONSE

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EXHIBIT LIST

Exhibit Number	Description
2001	<i>Unified Patents, LLC v. Corrigent Corp.</i> , IPR2022-01514, Paper No. 1 (Petition) filed on September 29, 2022
2002	<i>Cisco Systems, Inc., Dell Techs. Inc., and Dell Inc. v. Corrigent Corp.</i> , IPR2023-00169, Paper No. 1 (Petition) filed on November 17, 2022
2003	<i>Unified Patents, LLC v. Corrigent Corp.</i> , IPR2022-01514, Paper No. 6 (Patent Owner's Preliminary Response) filed on January 25, 2023

I. INTRODUCTION

The '431 Patent claims a novel and non-obvious apparatus that intelligently uses a network's available bandwidth to maximize its use in the network. The '431 Patent's system uses a controller to (1) determine the specific bandwidth needs of logical connections in a logical network topology, (2) map the logical network topology to the physical network topology, and (3) allocate bandwidth to the physical network's links based on the bandwidth needs of logical connections.

Petitioner challenges all of the '431 Patent's independent claims (claims 1, 12, 24, 25, and 28) based on two Grounds of unpatentability. Both of these grounds primarily rely on the same three references – Baker, Wright, and Holender '699.¹ While Baker, Wright, and Holender '699 generally relate to mapping a logical topology to a physical topology, each does so differently than the '431 Patent. As discussed in more detail below, there are at least two independent reasons why the combination of Baker, Wright, and Holender '699 fails to disclose all of the '431 Patent's independent claims' limitations.

¹ Ground 2 further includes the Holender '894 reference. Petition at 4. However, Petitioner does not cite Holender '894 as support for any of the claim limitations that Patent Owner disputes in this patent owner's preliminary response.

First, neither Wright nor Holender '699 discloses “determining respective bandwidth requirements for the logical connections based on parameters of the service,” as required by claim limitations [1.3], [12.3], [24.3], [25.4], and [28.4]. Specifically, neither reference discloses that its alleged bandwidth requirement determination is “based on parameters of the service.” Because of this deficiency, which is included in every independent claim, the Petition fails to establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of at least one claim.

The second, independent, reason is that neither Baker nor Holender '699 discloses “allocating a bandwidth for the service on each of the links in response to ... the mapping,” as required by claim limitation [1.5], [12.5], [24.5], [25.6], and [28.6]. For this limitation, Petitioner relies on either Baker’s “Administer Ring procedure” or Holender '699’s association of different parts of the traffic with different parts of the physical transmission and switching resources (“Holender’s purported mapping”) as the claimed “the mapping,” which refers back to mapping required by claim limitation [1.4]. Neither alleged mapping, however, meets claim limitation [1.4]’s mapping requirements. Accordingly, for this second, independent reason, the Petition again fails to establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of at least one claim.

In addition to the Petition’s failure to establish unpatentability of the ’431 Patent’s independent claims, institution should be denied under 35 U.S.C. § 314 based on the *General Plastic* factors. As explained in detail below, five factors (1, 2, 4, 5, and 6) weigh strongly in favor of discretionary denial, whereas two factors (3 and 7) are neutral. Importantly, there were two other IPRs filed against the ’431 Patent and Arista’s gamesmanship of the system should not be rewarded with substantive consideration of their IPR petition. As is evidenced by Arista’s petition and supporting expert declaration, Arista chose to use the previously filed IPR petitions as a roadmap to their own IPR petition. Accordingly, Patent Owner respectfully requests that the Board exercise its discretion and deny institution.

II. CLAIM CONSTRUCTION

A court “‘look[s] to the words of the claims themselves . . . to define the scope of the patented invention.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). A claim term is generally given its “ordinary and customary meaning,” which is “the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Id.* at 1312-13. While courts may deviate from the plain and ordinary meaning in some circumstances, there is a “heavy presumption that a claim term carries its ordinary and customary meaning.” *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359,

1366 (Fed. Cir. 2002) (internal quotations omitted). Under this “exacting” standard, any departure from a claim’s ordinary meaning must be based on language that is “so unmistakable as to be unambiguous.” *Dealertrack Inc. v. Huber*, 674 F.3d 1315, 1322 (Fed. Cir. 2012) (citations omitted).

Here, at this stage in the proceeding, Patent Owner will apply the ordinary and customary meaning to the ’431 Patent’s claim terms.

III. ARGUMENTS

Petitioner challenges all of the ’431 Patent’s claims, including independent claims 1, 12, 24, 25, and 28. Petitioner challenges

independent claims 1 and 25 with Ground 1 and independent claims 12, 24, and 28 with Ground 2.

As it pertains to this patent owner’s preliminary response, claim 1 (a method claim) is representative of claim 25 (an apparatus claim). Claim 1 recites:

[1.0] A method for assigning bandwidth in a network including nodes coupled by links arranged in a physical topology, the method comprising:

[1.1] defining between the nodes logical connections associated with a data transmission service to be provided over the network,

[1.2] the logical connections having a connection topology different from the physical topology;

[1.3] determining respective bandwidth requirements for the logical connections based on parameters of the service;

[1.4] mapping the connection topology to the physical topology, so that each of the logical connections is associated with one or more links of the physical topology; and

[1.5] allocating a bandwidth for the service on each of the links in response to the bandwidth requirements of the logical connections and to the mapping.

EX1001, 13:35–51 (bracketing added).

As it pertains to this patent owner’s preliminary response, claim 12 (a method claim) is representative of claims 24 (a method claim) and 28 (an apparatus claim). Claim 12 recites:

[12.0] A method for assigning bandwidth in a network including nodes coupled by links arranged in a physical topology, the method comprising:

[12.1] defining between the nodes a first set of logical connections associated with a first data transmission service to be provided over the network, and a second set of logical connections associated with a second data transmission service to be provided over the network, the first set of logical connections having a first connection topology, the second set of logical connections having a second connection topology,

[12.2] the first and second connection topologies being different from the physical topology;

[12.3] determining respective first bandwidth requirements for the first set of logical connections based on first parameters of the first data transmission service and respective second bandwidth requirements for the second set of logical connections based on second parameters of the second data transmission service;

[12.4] generating a first mapping of the first connection topology to the physical topology, so that each of the first set of logical connections is associated with one or more links of the physical topology;

[12.5] allocating a first bandwidth for the first data transmission service on each of the links in response to the first bandwidth requirements of the first set of logical connections and to the first mapping;

[12.6] generating a second mapping of the second connection topology to the physical topology, so that each of the second set of logical connections is associated with one or more links of the physical topology;

[12.7] allocating a second bandwidth for the second data transmission service on each of the links in response to the second bandwidth requirements of the second set of logical connections and to the second mapping; and

[12.8] summing the first and the second bandwidths to determine a total allocation for each of the links.

EX1001, 14:21–57 (bracketing added).

As demonstrated below, Ground 1 of the Petition fails to teach claim limitations [1.3] and [1.5]. The Petition’s failures with respect to claim 1 are repeated for Ground 1, claim 25 and Ground 2, claims 12, 24, and 28. Thus, neither Ground 1 nor Ground 2 support institution because they both fail to establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of the ’431 Patent’s independent claims, and therefore also the claims which depend therefrom. 35 U.S.C. § 314(a). Accordingly, the Board should deny institution.

A. Ground 1 should be denied because the combination of references fails to teach “determining respective bandwidth requirements for the logical connections based on parameters of the service” (claim limitation [1.3]/[25.4])

Petitioner relies on Wright and Holender '699 to argue that the combination of Baker, Wright, and Holender '699 disclose claim limitation [1.3], which requires “determining respective bandwidth requirements for the logical connections based on parameters of the service.”² Petition at 24–30. For the purposes of this patent owner’s preliminary response only, and without waiving the right to dispute that Wright and Holender '699 disclose the entirety of this limitation, at this time Patent Owner does not dispute that Wright and Holender '699 disclose “determining respective bandwidth requirements for the logical connections.” The Petition fails to establish, however, that Wright’s or Holender '699’s alleged bandwidth determinations are “based on parameters of the service.” Petitioner also fails to establish that it would be obvious to combine Holender '699

² Claim limitation [25.4] similarly requires “determin[ing] respective bandwidth requirements for the logical connections based on parameters of the service.” EX1001, 16:24–25. The Petition does not present any new arguments for claim limitation [25.4] and simply cross-references to its discussion of claim limitation [1.3]. Petition at 57. Accordingly, while Patent Owner’s argument will only address claim limitation [1.3] it also applies to claim limitation [25.4].

with Baker and Wright such that the combination would render obvious claim limitation [1.3].

1. Wright does not render obvious claim limitation [1.3]

Petitioner fails to establish that Wright’s alleged bandwidth determinations are “based on parameters of the service.” In support of its assertion that Wright discloses this limitation, Petitioner makes three arguments: (1) Wright’s Figure 5 flowchart establishes that Wright’s “bandwidth requirements” are based on “communication requirements,” which Petitioner alleges to be “parameters of the service”; (2) Wright describes multiple additional exemplary ways in which bandwidth requirements are “based on parameters of [a] service”; and (3) Wright determines respective bandwidth requirements for the logical connections based on different services such as VoIP and VOD. As explained below, each of these arguments fails.

First, Petitioner points to Wright’s Figure 5 flowchart as a basis for its assertion that “Wright’s ‘bandwidth requirements’ calculated for virtual links of the virtual topology are therefore based on the ‘communication requirements’ (*‘parameters of the service’*) of the logical connectivity requirements.” Petition at 27. Petitioner points to Figure 5, Step 508 (“Calculate bandwidth requirements”) as meeting the portion of the claim limitation requiring “determining respective bandwidth requirements for the logical connections.” *Id.* at 25–26. It also points to

Figure 5 Step 504 (“Receive logical connectivity requirements”) as satisfying the “parameters of service” portion of the claim limitation. *Id.* at 26–27. By Petitioner’s logic, because Step 504 (“Receive logical connectivity requirements”) is above Step 508 (“Calculate bandwidth requirements”) in the flow chart, then Step 508’s bandwidth requirements calculations must be based on Step 504. *Id.*

However, Petitioner provides no support in Wright or from its expert for such an assumption. *Id.* While Petitioner provides support for the assumption that Step 508 is based on Step 506 (“Create a restricted topology to provide logical connections”)³, Petitioner fails to support its assumption that Step 506 is based on Step 504. *Id.* In support of its argument, Petitioner provides conclusory sentences citing to paragraph 24 of Wright and its expert’s declaration. But nothing in the cited section of Wright states that Step 506 is based on Step 504. *Id.*; EX1006, [0024]. Similarly, Petitioner’s expert adds nothing more regarding Wright’s disclosures than what is identified in the Petition and instead merely parrots Petitioner’s failed logic that Step 508 is based on Steps 506 and 504 “according to Wright’s FIG. 5 flow.” *Id.* at [0080-81]. Accordingly, Petitioner has failed to establish that Wright’s alleged determination of respective bandwidth requirements

³ This portion of their assumption is also supported by Wright’s description of Figure 5. EX1006, [0024].

for the logical connections is based on “parameters of the service,” as the claim limitation requires.

Second, Petitioner asserts that “Wright describes multiple additional exemplary ways in which bandwidth requirements are ‘*based on parameters of [a] service*’.” Petition at 27. Petitioner, however, provides only examples of alleged “parameters of service” and provides no argument or evidence that explains how each is used as a basis in “determining respective bandwidth requirements for the logical connections.” *Id.* Petitioner’s expert also provides no further explanation or discussion and instead just quotes Wright and then provides a conclusory statement that each “exemplary way” is a “parameter of the service.” EX1003, ¶82.

Conclusory and unsupported expert testimony should be offered little to no weight. *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper No. 9 at 15 (P.T.A.B. Aug. 24, 2022) (designated Precedential on Feb 10, 2023) (“[T]he cited declaration testimony is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight.”). Accordingly, even if each of the “exemplary ways” was a “parameter of the service,” Petitioner has failed to even allege how each is used in “determining respective bandwidth requirements for the logical connections.”

Third, Petitioner attempts to fill the hole in Wright’s teachings with respect to whether Wright discloses “determining respective bandwidth requirements for

the logical connections ***based on*** parameters of the service” (emphasis added) by pointing to a single disclosure in Wright related to example services that could be used and then citing a single conclusory statement in the expert declaration. Petition at 27–28. But this also fails to establish that Wright discloses this limitation. *Id.*

While Petitioner is correct that Wright states that it could be used for different services such as VoIP and VOD, neither Petitioner nor its expert identifies any disclosures in Wright related to “determining respective bandwidth requirements for the logical connections based on” any of these different services. *Id.* Instead, Petitioner attempts to fill this hole in Wright’s disclosures exclusively with its expert’s conclusory statement that “[i]t would have therefore been obvious to a POSITA to determine the bandwidth requirement for a communication service based on parameters specifying the type of service.” EX1003, ¶83. But the cited portions of the expert’s declaration do not provide any reasoning or explanation about how Baker’s or Wright’s systems would perform the determination based on these services. *Id.* at ¶¶83–85. Furthermore, even if Petitioner’s expert’s conclusory statement is true, which it is not, it still fails to even allege that the hypothetical “bandwidth requirement” that is purportedly determined based on these services is “for the logical connections,” as the claim limitation requires. *Id.*

Thus, the expert’s conclusory and unsupported statement, by itself, cannot support a finding that this claim limitation is obvious.

Petitioner’s argument and evidence here is nearly identical to that in *Xerox Corp. v. Bytemark, Inc.*, which the Director recently designated as precedential. IPR2022-00624, Paper No. 9 (P.T.A.B. Aug. 24, 2022) (designated precedential on Feb 10, 2023). Just like Petitioner here, the petitioner in *Xerox Corp.* (“*Xerox Petitioner*”) pointed to a general statement in the prior art reference and then argued, based only on expert testimony, that it would have been obvious to perform specific actions required by the claim limitation. *Id.* at 14, 16. The Board rejected *Xerox Petitioner*’s attempt to fill a hole in the prior art with conclusory expert testimony because it did not satisfy the narrow exception where it is permissible.⁴ *Id.* at 16. Specifically, the Board noted that it “might be permissible

⁴ In rejecting *Xerox Petitioner*’s argument, the Board held that *Xerox Petitioner*’s argument “is particularly problematic in cases where, like here, expert testimony is offered not simply to provide a motivation to combine prior-art teachings, but rather to supply a limitation missing from the prior art.” *Xerox Corp.*, IPR2022-00624, Paper No. 9 at 16 (citing *Arendi S.A.R.L. v. Apply, Inc.*, 832 F.3d 1355, 1361–62 (Fed. Cir. 2016) (holding that reliance on common sense in an obviousness analysis is “typically invoked to provide a known motivation to

when ‘the limitation in question [is] unusually simple and the technology particularly straightforward.’” *Id.* However, the Board rejected *Xerox* Petitioner’s argument because it “has not alleged that to be the case here, much less provided support for such an allegation.” *Id.* So too here. Petitioner does not even allege, nor is it true, that “the limitation in question is unusually simple” or that “the technology particularly straightforward.” Petition at 27–28.

Accordingly, Petitioner’s attempt to simply fill in the holes in Wright’s disclosures with conclusory expert testimony should be rejected.

2. Holender ’699 does not render obvious claim limitation [1.3]

Petitioner argues that “Holender ’699 render[s] obvious determining bandwidth requirements based on service parameters.” *Id.* at 28–30. However, Petitioner’s argument fails for two reasons: (1) Holender ’699 does not disclose determining bandwidth requirements *based on service parameters* and (2) Petitioner fails to establish that it would be obvious to combine Holender ’699 with Baker and Wright such that the combination would render obvious claim limitation [1.3]. Each of these two reasons provides an independent basis for the Board to determine that Holender ’699 does not render obvious claim limitation [1.3].

combine, not to supply a missing claim limitation”) (emphasis omitted)).

First, Holender '699 does not disclose determining bandwidth requirements *based on service parameters.*”). Petitioner argues that Holender '699 “teaches that the bandwidth requirements are ‘based on parameters of the service’ by disclosing that such requirements are determined based on the ‘maximum allowed blocking value’ for each route.” Petition at 29–30. But neither Petitioner nor its expert explains what a “maximum allowed blocking value” is or how it teaches the claimed “parameters of the service.” *Id.* (citing EX1021, ¶122). Instead, Petitioner’s expert offers mere conclusory and unsupported statements to support its argument. Conclusory and unsupported expert testimony should be offered little to no weight. *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper No. 9 at 15 (P.T.A.B. Aug. 24, 2022) (Precedential) (“[T]he cited declaration testimony is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight.”).

All Petitioner does assert is that Holender '699’s “maximum allowed blocking value” is “*similar* to Wright’s disclosure of a minimum and maximum bandwidth, which are examples of ‘parameters of the service.’” *Id.* at 30 (emphasis added). Even if we assume that Wright’s minimum and maximum bandwidth are parameters of service, Petitioner admits that Holender '699’s “maximum allowed blocking value” is not the same as Wright’s minimum and maximum bandwidth, just similar. *Id.* But neither Petitioner nor its expert explain how they are similar,

how they are different, and/or how, despite these differences, a “maximum allowed blocking value” is a parameter of service. Accordingly, Petitioner has failed to establish that Holender ’699 discloses determining bandwidth requirements based on service parameters.

Second, Petitioner fails to establish that it would be obvious to combine Holender ’699 with Baker and Wright such that the combination would render obvious claim limitation [1.3]. It is Petitioner’s burden to show that a person of ordinary skill in the art would have been motivated to combine Holender ’699 with Baker and Wright such that they would arrive “*at the claimed invention.*” *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1073 (Fed. Cir. 2015) (“[O]bviousness concerns whether a skilled artisan not only could have made but would have been motivated to make the combinations or modifications of prior art *to arrive at the claimed invention.*”) (emphasis added). Petitioner fails to meet this burden.

Here, under Petitioner’s argument, Petitioner must show that a person of ordinary skill would have been motivated to combine Holender ’699’s “logical link capacity” determinations with the system of Baker and Wright. But Petitioner provides no motivation to combine Holender ’699’s “logical link capacity” determinations with the system of Baker and Wright. Petition at 7–15, 28–30. Instead, Petitioner argues only that a person of ordinary skill in the art would combine “Holender ’699’s teaching to employ multiple parallel logical networks”

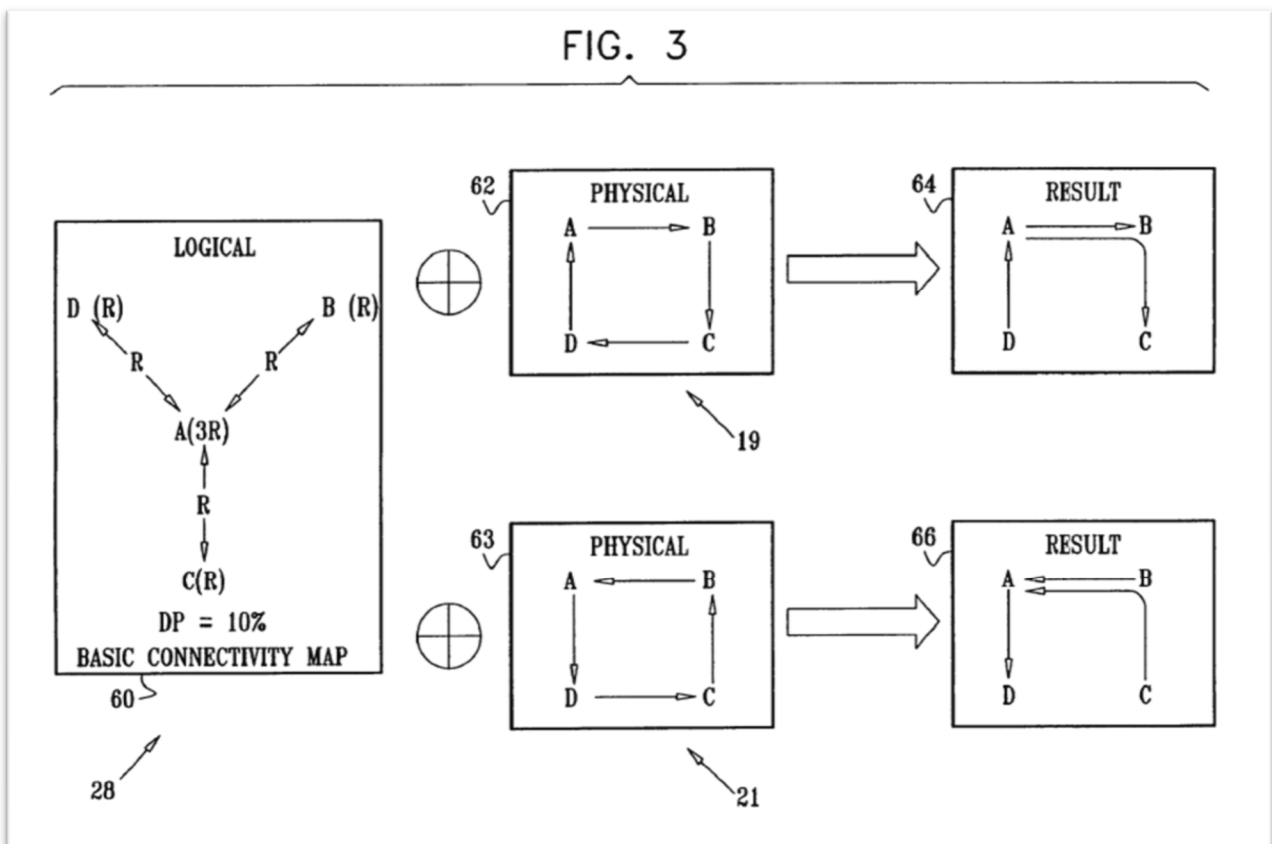
onto the system of Baker and/or Wright. *Id.* at 7–15. Thus, the only aspect of Holender '699 that Petitioner identifies as being combined with Baker or Wright in its proposed combination is the overlaying “separate logical networks for different services with such differing demands” onto a physical network. *Id.* At no point does Petitioner provide any motivation to combine Holender '699's “logical link capacity” determinations, which are distinct from its disclosure of overlaying with the system of Baker and/or Wright. This is fatal to the Petition as Petitioner relies on Holender '699's “logical link capacity” determinations, which are allegedly based on the “maximum allowed blocking value” for each route, and which are distinct from Holender '699's disclosure of “separate logical networks for different services with such differing demands” onto a physical network, as teaching claim limitation [1.3]. *Id.* at 28–30. Accordingly, Petitioner never establishes that a skilled artisan would have been motivated to make the combination of Holender '699 with Baker and Wright *to arrive at the claimed invention*.

B. Ground 1 should also be denied because the combination of references fails to teach “allocating a bandwidth for the service on each of the links in response to the bandwidth requirements of the logical connections and to the mapping” (claim limitation [1.5]/[12.5])

Claim limitation [1.5] requires “allocating a bandwidth for the service on each of the links in response to the bandwidth requirements of the logical connections and to *the mapping*.” (emphasis added). Claim limitation [1.5]'s

reference to “the mapping” is a reference back to claim limitation [1.4], which requires “mapping the connection topology to the physical topology, so that each of the logical connections is associated with one or more links of the physical topology.”

The '431 Patent explains the mapping limitation visually with Figure 3. EX1001, Figure 3, 8:21–51. In the below reproduction of Figure 3, you can see the connection topology [60] and the physical topology [either 62 or 63]. *Id.* The mapping step requires mapping each logical connection ($A \leftrightarrow B$, $A \leftrightarrow C$, $A \leftrightarrow D$) to one or more links on the physical topology.



Id. at Figure 3. The '431 Patent also explains the mapping step using Table I, which also shows the mapping of logical connections to one or more links on the physical topology.

TABLE I		
Hub and Spoke Connections	Network 19 Links	Network 21 Links
A-B	A-B	
A-C	A-B and B-C	
A-D		A-D
B-A		B-A
C-A		C-B and B-A
D-A	D-A	

Id. at 8:38–49.

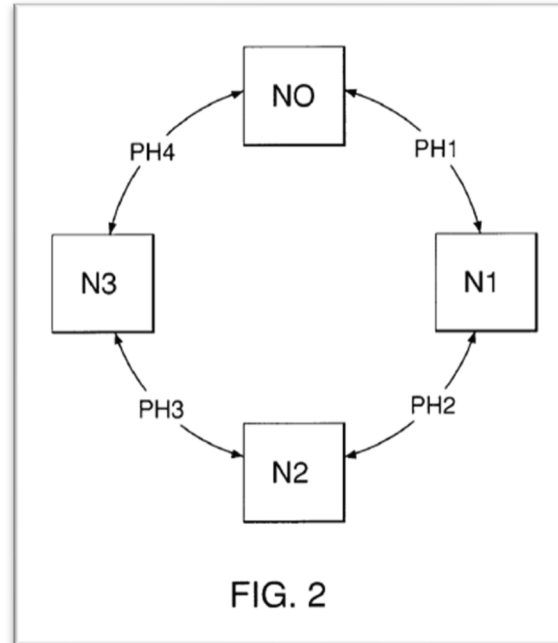
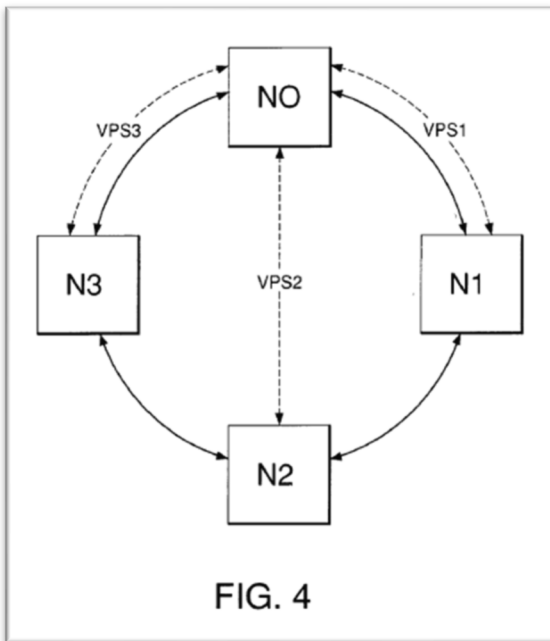
Looking to Petitioner’s argument for claim limitation [1.5], Petitioner points to two possible disclosures as “the mapping”: (1) Baker’s “Administer Ring procedure” as “the mapping” (Petition at 37–38) and (2) Holender ’699 disclosure that “a set of logical networks is established on top of a physical network.” Both fail to disclose claim limitation [1.5]’s “the mapping” requirement.

1. Baker’s “Administer Ring procedure” cannot be the claimed “mapping”

Baker’s “Administer Ring procedure” cannot be the claimed “mapping” because it does not “map[] the connection topology to the physical topology, *so that each of the logical connections is associated with one or more links of the physical topology,*” (emphasis added) as required by claim limitation [1.4]. The

Administer Ring procedure, as even Petitioner admits, simply maps nodes to other nodes, *i.e.*, it establishes the virtual connections between nodes. Petition at 30–31 (citing EX1005, [0032], [0051], [0053]–[0054], Figure 4). As Baker expressly states: “The result of the Administer Ring routine is the assignment of one or more virtual paths from the head node to each of the other nodes in the ring.” EX1005, [0054]. It does not, however, associate each logical connection “with one or more links of the physical topology,” as the claimed “mapping” limitation requires.

This is further confirmed by looking to Baker’s Figure 4 embodiment, which is also the example upon which Petitioner specifically relies. Petition at 31. Here, the Administer Ring procedure establishes virtual connections VPS1, VPS2, and VPS3. EX1005, Fig. 4. Taking VPS2 as an example, Baker’s Administer Ring procedure establishes it as a virtual connection between node N0 and node N2. *Id.* But it does not, as the claim limitation requires, associate VPS2 to any particular links in the physical topology. *Compare id.*, Fig. 4 *with id.*, Fig. 2 (*see below*)



Logical connection VPS2 could be mapped to the physical topology, as shown in Figure 2, via physical connections PH1 and PH2 or via physical connections PH3 and PH4. Establishing which of these physical connections the logical connection maps to is required by claim limitation [1.4]. As Baker's Administer Ring procedure does not perform that mapping, it does not disclose this claim limitation.

Accordingly, Petitioner has failed to demonstrate that the combination of Baker and Wright discloses claim limitation [1.5] because Petitioner relies exclusively on Baker's Administer Ring procedure as claim limitation [1.5]'s "the mapping," which as discussed above, does not meet the "mapping" claim limitation's requirements.

2. Holender '699's alleged mapping is not the claimed "mapping"

Holender '699's disclosure that "a set of logical networks is established on top of a physical network" cannot be claim limitation [1.5]'s "the mapping" because Petitioner does not establish that Holender '699 disclosure satisfies claim limitation [1.4]. Petition at 30–32, 36–38. Claim limitation [1.4] is the "mapping" claim limitation that provides the antecedent basis for claim limitation [1.5]'s reference to "the mapping." However, Petitioner never even argues that Holender '699 satisfies claim limitation [1.4] in that section of its Petition. *Id.* at 30–32.

Even when discussing Holender '699's alleged "mapping" with respect to claim limitation [1.5], Petitioner does not allege that the alleged mapping is done such that "each of the logical connections is associated with one or more links of the physical topology," as required by claim limitation [1.4]. *Id.* at 38. Petitioner's single quote from Holender '699 states that "the traffic," not the logical connections as claim limitation [1.4] requires, is associated with "different parts of the physical transmission and switching resources." *Id.* Thus, even if Petitioner's assertions made with respect to claim limitation [1.5] are considered, they do not establish that Holender '699's alleged mapping satisfies claim limitation [1.4].

Accordingly, Petitioner has failed to demonstrate that the combination of Baker, Wright, and Holender '699 discloses claim limitation [1.5] because neither Baker's Administer Ring procedure or Holender '699's alleged mapping meets the

“mapping” claim limitation’s requirements. For this additional reason, institution should be denied.

C. Ground 2 should be denied for the same reasons as Ground 1

Ground 2 addresses the remaining independent claims (claims 12, 24, and 28) and applies the same faulty logic as used in Ground 1. *Compare* Petition at 24–30 (claim limitation [1.3]) *with id.* at 61–63, 71, 75 (claim limitations [12.3], [24.3], and [28.4]); *also compare* Petition at 32–38 (claim limitation [1.5]) *with id.* at 64, 71, 76 (claim limitations [12.5], [24.5], and [28.6]). Accordingly, for the same reasons as discussed above with respect to Ground 1, Ground 2 also fails to establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of independent claims 12, 24, and 28, and the dependent claims that depend therefrom.

D. Grounds 3 and 4 do not address any independent claims

Grounds 3 and 4 only addresses dependent claims 6 and 17, respectively. Petition at 77–83. Accordingly, they do not remedy the deficiencies in Petitioner’s arguments, as described above with respect to Grounds 1 and 2.

E. The Board should use its discretion and deny institution under the *General Plastic* factors

The Board should exercise its discretion to deny institution of *inter partes* review under 35 U.S.C. § 314(a) because the instant Petition presents essentially the same grounds and challenges the same claims as Cisco/Dell’s prior petition.

EX2002. As explained below, denial of institution here is supported by each of the factors in *General Plastic Indus. Co., Ltd. v. Kaisha*, IPR2016-01357, Paper 19 at 9–10 (P.T.A.B. Sept. 6, 2017) (precedential) (“*General Plastic*”).

3. Factor 1: Whether the same petitioner previously filed a petition directed to the same claims of the same patent.

This factor favors denying institution because the Cisco/Dell IPR petition and the Petition here challenge the same claims of the same patent and, while the Petitions were not filed by the same Petitioner, there is a significant relationship between Arista and Cisco/Dell. As the Board has found, even if petitioners are not the same, Factor 1 also weighs against institution when there is a “significant relationship” between the parties that have filed the IPR petitions and the IPR petitions challenge the same claims of the same patent. *Valve Corp. v. Elec. Scripting Prods., Inc.*, IPR2019-00062, Paper 11 at 9–10 (P.T.A.B. Apr. 2, 2019) (precedential). That is the case here.

While Arista attempts to argue otherwise, pointing to the fact that they are not co-defendants in the same case with Cisco/Dell, that is not enough to refute the existence of a significant relationship. Petition at 86–87. In fact, the Board has recognized that a “Petitioner implicitly create[s] such a relationship by using the prior petitioners’ work as a menu and picking and choosing from their work product.” *Ericsson Inc. v. Uniloc 2017, LLC*, IPR2019-01550, Paper 8 at 11–12 (P.T.A.B. Mar. 17, 2020) (“The instant Petitioner’s decision to use the prior

petitions as a roadmap for its own petition ties the interests of all of the petitioners together.”).

Here, there is no dispute that Arista is challenging the same claims of the same patent. There is also a significant relationship between Arista and Cisco/Dell because Arista used Cisco/Dell prior petition as a roadmap for its own petition. Arista admits that its “petition includes the same grounds as the Cisco petition.” Petition at 88. More than merely using the same grounds, Arista used the Cisco/Dell petition as a roadmap and copied (nearly verbatim) all of Cisco/Dell’s arguments and then added additional prior art and arguments to four claim elements that they clearly deemed to be weak points in the Cisco/Dell petition. *Id.* Not only did Arista copy the petition nearly verbatim, but Arista’s expert, Dr. Lavian, “incorporated the totality of [Cisco/Dell’s expert’s] declaration by reference in [his] declaration in support of the invalidity grounds raised in [his] declaration.” EX1021, ¶24. Yet, despite incorporating by reference the totality of the grounds, Arista’s expert modified certain motivations to combine, for example, and added additional references to certain grounds of invalidity. *Compare* EX1003, ¶95 *with* EX1021, ¶38. Such picking and choosing is exactly the road mapping that the Board in *Ericsson* found to create a significant relationship between the parties. *Ericsson Inc.*, IPR2019-01550, Paper 8 at 11–12.

Even if the Cisco/Dell IPR petition is not evaluated on the merits and is discretionarily denied under 35 U.S.C. § 314(a) based on the Board's analysis of the *Fintiv* factors, this factor still weighs in favor of denying institution because of Arista's use of road mapping. The Director's recent guidance in its *Code200* precedential opinion establish that even if "the first-filed petition under factor 1 was discretionarily denied or otherwise was not evaluated on the merits" factor 1 still "weigh[s] in favor of discretionary denial when there are 'road-mapping' concerns." *Code200, UAB v. Bright Data Ltd.*, IPR2022-00861, Paper 18 at 5 (P.T.A.B. Aug. 23, 2022) (precedential). As explained above, Arista's Petition is the epitome of road mapping. Arista had months to study and analyze both the Unified Patents petition and the Cisco/Dell petition, copied the Cisco/Dell petition nearly verbatim for all of the claim limitations and then added additional prior art and obviousness arguments to those claim limitations that it deemed vulnerable to a denial of institution on the merits. Arista's gamesmanship in staggering its IPR petition after both Unified patent's petition and Cisco/Dell's petition, should not be rewarded with institution.

Accordingly, this factor favors denying institution.

4. Factor 2: Whether at the time of filing of the first petition the petitioner knew of the prior art asserted in the second petition or should have known of it.

Factor 2 also favors denying institution. Arista essentially ignores Factor 2. Arista asserts that Factor 2 weighs against discretionary denial because of “the short time between the filing of Unified and Cisco’s petitions and the present Petition.” Petition at 87.⁵ However, Factor 2 has nothing to do with the time between petitions. Instead, under the second *General Plastic* factor, the Board considers “whether at the time of filing of the first petition the petitioner knew of the prior art asserted in the second petition or should have known of it.” *General Plastic* at 9–10. Because Arista has failed to explain its knowledge of the prior art asserted in the Unified Patent IPR or Cisco/Dell IPR at the time of their filings, this second factor weighs in favor of denial. *See Apple v. Uniloc*, IPR2020-00854, Paper 9 at 9 (P.T.A.B. Oct. 28, 2020) (precedential) (“The issue for us here is that *Apple has failed to set forth facts or offer an explanation concerning its knowledge*, at the time it filed the first petition, of the prior art asserted in the 023

⁵ In support of this statement, Arista provides a short cite to “*Mercedes-Benz* at 13.” Petition at 87. However, but nowhere in Arista’s Petition is there a full citation to this “*Mercedes-Benz*” case, so it is impossible for Patent Owner to address this alleged case support.

IPR and here. ***Because of the lack of explanation, we conclude that this second General Plastic factor weighs in favor of denying institution of the proceeding.***") (emphasis added).

The reason that Arista does not directly address Factor 2 is clear, they cannot dispute that they had knowledge of, or should have known of, the prior art asserted in its Petition at the time the Cisco/Dell IPR petition was filed. Arista admits that it had knowledge of the Unified Patents petition after it was filed. Petition at 87. The Unified Patents petition was filed approximately 2 months before the Cisco/Dell petition. EX2001 (Unified Patents petition) at 93 (filed on September 29, 2022); EX2002 (Cisco/Dell petition) at 104 (filed on November 17, 2022). The Unified Patents petition asserts 3 of the 4 references that Arista uses in grounds 1 and 2, which are the grounds that attack the '431 Patent's independent claims. EX2001 at 3–4 (asserting Baker, Wright, and Holender '894). The only reference that Arista uses in grounds 1 and 2 that is not in the Unified Patents petition is Holender '699, which is from the same inventor as the Holender '894. Based on Arista's admitted knowledge of the Unified Patents petition, and their silence as to factor 2, it can be inferred that Arista did know of, or should have known of, the prior art asserted in its petition at the time the Cisco/Dell petition was filed.

5. Factor 3: Whether at the time of filing of the second petition the petitioner already received the patent owner's preliminary response to the first petition or received the Board's decision on whether to institute review in the first petition.

Factor 3 is at least neutral. Arista asserts that this factor favors institution because “Corrigent has not filed any Patent Owner Preliminary Response, so Petitioner receives no potential benefit or tactical advantage.” Petition at 87. But Arista strategically delayed filing the instant Petition until the day before the deadline for Patent Owner's preliminary response in the Unified Patents' IPR proceeding. EX2003 (Patent Owner's Preliminary Response in the Unified Patents' IPR proceeding) at 14 (filed on January 25, 2023). Petitioner should not be rewarded for its gamesmanship under Factor 3. Accordingly, Factor 3 should be, at the least, neutral.

6. Factor 4: The length of time that elapsed between the time the petitioner learned of the prior art asserted in the second petition and the filing of the second petition.

Factor 4 further favors denying institution. Arista asserts that Factor 4 weighs against discretionary denial because of “the short time between the filing of Unified and Cisco's petitions and the present Petition.” Petition at 87.⁶ Arista

⁶ As explained above, Arista's citation to a “*Mercedes-Benz*” case is without a full citation, so Patent Owner cannot address this alleged case support.

makes no attempt to explain why it waited 4 months after Unified Patents filed its petition, which first disclosed this Petition's asserted prior art, to file its Petition.

Id. Accordingly, this Factor weighs in favor of denying institution. *Apple*, IPR2020-00854, Paper 9 at 11 (“Because of the lack of explanation, we conclude that this fourth *General Plastic* factor weighs in favor of denying institution of the proceeding.”).

7. Factor 5: Whether the petitioner provides adequate explanation for the time elapsed between the filings of multiple petitions directed to the same claims of the same patent.

This fifth factor also weighs in favor of denying institution because Arista provides no explanation for the delay in filing this Petition. As stated above with respect to factor four, Arista makes no attempt to explain why it waited 4 months to file this Petition after the filing of the Unified Patents petition, which first disclosed the Petition's asserted prior art. Arista also fails to explain why it waited two months to file a petition that repeated nearly verbatim the same arguments as Cisco/Dell's prior petition. Accordingly, this factor weighs in favor of denying institution. *Apple*, IPR2020-00854, Paper 9 at 11 (“For the same reasons stated above, for instance, Apple's lack of explanation, we conclude that this fifth *General Plastic* factor also weighs in favor of denying institution.”).

8. Factor 6: The Finite Resources Of The Board

There is already a pending *inter partes* review challenging all of the same claims of the '431 Patent based upon the same core references (Baker, Wright, and Holender '699). Arista fails to explain why the Board should further extend its resources to consider an additional, nearly duplicative *inter partes* review. Arista asserts that “The similarities that exist between these petitions provide strong basis for efficiency” and “The Arista and Cisco petitions could be joined, due to the substantial overlap between the proceedings.” Petition at 88. However, Arista chose not to submit a copycat IPR petition and file a motion to join the Cisco/Dell IPR proceeding. Instead, Arista strategically chose use the Cisco/Dell petition as a roadmap, allegedly improve upon it, and then submit this Petition months later. Arista’s gamesmanship is an unnecessary waste of the Board’s finite resources and should result in denial of institution.

9. Factor 7: The Requirement Under 35 U.S.C. § 316(a)(11) To Issue A Final Determination Not Later Than 1 Year After The Date On Which The Director Notices Institution Of Review

There is no indication that the Board could not issue a decision within 1 year after institution. Although factor 7 may be considered neutral to the analysis, the remaining *General Plastic* factors (and, thus, the factors as-a-whole) clearly favor discretionary denial of Arista’s Petition.

IV. CONCLUSION

As discussed above, Petitioner has failed to establish a reasonable likelihood in prevailing to show the unpatentability of the challenged claims. Accordingly, the Board should deny institution.

Date: May 16, 2023

Respectfully submitted,

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CERTIFICATION UNDER 37 C.F.R. § 42.24

Under the provisions of 37 C.F.R. § 42.24, the undersigned hereby certifies that the foregoing document contains 6,575 words, and thus complies with the word-count limits of 37 C.F.R. § 42.24.

Date: May 16, 2023

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PATENT OWNER'S PRELIMINARY RESPONSE was served on May 16, 2023 by filing this document through the P-TACTS platform as well as by delivering a copy via the delivery method indicated to the attorneys of record for the Petitioner as follows:

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