

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner

v.

ORCKIT IP, LLC.
Patent Owner

IPR2023-00714
U.S. Patent No. 6,680,904

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

Discretionary denial under the *Fintiv* factors is not warranted even based on the newly published time-to-trial statistics. “When the parties rely on time-to-trial statistics, the PTAB will also consider additional supporting factors such as the number of cases before the judge in the parallel litigation and the speed and availability of other case dispositions.” Director’s June 21, 2022 Memorandum of Discretionary Denials, 9. When the petition was filed, the most recently published time-to-trial statistics (from June 2022) indicated a “median time (months) from filing to trial (civil only)” of 24.2 months. *See* EX2006, 35; *see also* Petition, 99. Patent Owner cites statistics published more recently, which predict a “median time (months) from filing to trial (civil only)” of 19.0 months. EX2006, 35. However, the same statistics demonstrate that the number of pending cases continues to steadily increase year over year since 2018, with an all-time high of 6,269 pending cases on March 31, 2023. Moreover, the number of filed (399) and pending (784) civil cases per judgeship was also at an all-time high on March 31, 2023. In other words, given the increasing backlog, there is no certainty that the median time-to-trial will remain at 19.0 months. Accordingly, Petitioner submits that *Fintiv* Factor 2 cannot outweigh the compelling merits demonstrated in the Petition. *See, e.g.*, POPR, 13-17. Petitioner respectfully requests institution.

Petitioner's Reply to Patent Owner's Preliminary Response
IPR2023-00714 (U.S. Patent 6,680,904)
Respectfully submitted,

Dated: July 28, 2023
Desmarais LLP
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/Yung-Hoon Ha/
Yung-Hoon Ha
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Petitioner's Reply to Patent Owner's Preliminary Response
IPR2023-00714 (U.S. Patent 6,680,904)

CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. § 42.6(e) and 37 C.F.R. § 42.105, service was made on Patent Owner at the correspondence address of record, as detailed below.

<i>Date of service</i>	July 28, 2023
<i>Manner of service</i>	Electronic Email: jim@carmichaelip.com ; stevemcbride@carmichaelip.com ; mitch@carmichaelip.com ; Orckit-IPRs@carmichaelip.com
<i>Documents served</i>	Petitioner's Authorized Reply to Patent Owner's Preliminary Response
<i>Persons served</i>	James T. Carmichael Stephen McBride CARMICHAEL IP, PLLC 8000 Towers Crescent Drive, 13th Floor Tysons, VA 22182

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