

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner

v.

ORCKIT CORPORATION,
Patent Owner.

Case IPR2023-00714
Patent No. 6,680,904

**PATENT OWNER'S SUR-REPLY
IN SUPPORT OF PRELIMINARY RESPONSE**

Petitioner’s Reply arguments mischaracterize the facts. First, Petitioner’s assertion that “when the petition was filed, the most recently published time-to-trial statistics [was] from June 2022” is incorrect. The Wayback Machine accessed and archived the September 2022 time-to-trial statistics as early as February 16, 2023—nearly a month before the Petition’s March 14, 2023 filing date.¹ Second, Petitioner is wrong to suggest that the March 2023 statistics show an “increasing backlog” of civil cases. Rather, the number of filed civil cases per judgeship in March 2023 (399) is not materially different than that number in March 2018 (395). Ex. 2006, 35. Petitioner’s portrayal of that number as an “all-time high” omits the fact that the difference is only 4 cases (about 1 percent). And the significantly shorter March 2023 time-to-trial statistics show any alleged backlog is actually decreasing. Similarly, Petitioner is incorrect that there are “784 [pending] civil cases per judgeship”—that number represents both civil and criminal cases. Ex. 2006, 35. Any increase is explained by the rise in criminal felony (not civil) filings from March 2018 (106) to March 2023 (145). Finally, the Petition did not make a demonstration of compelling merits—rather, it merely included one sentence alleging it without explanation. Given that *Fintiv* factor 2 strongly weighs against institution and no factor strongly favors it, institution should be denied.

¹ See <https://web.archive.org/web/20230216144059/https://www.uscourts.gov/statistics-reports/analysis-reports/federal-court-management-statistics>.

Date: August 7, 2023

Respectfully submitted,

/Minghui Yang/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following document was served by electronic service, by agreement between the parties, on the date below:

**PATENT OWNER'S SUR-REPLY IN SUPPORT OF
PRELIMINARY RESPONSE**

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