

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUNIPER NETWORKS, INC.

Petitioner,

v.

ORCKIT CORPORATION

Patent Owner.

Case IPR2024-00037

U.S. Patent No. 10,652,111

**MOTION FOR JOINDER TO
INTER PARTES REVIEW IPR2023-00554**

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I. INTRODUCTION

Juniper Networks, Inc. (“Juniper” or “Petitioner”) respectfully submits this Motion for Joinder along with a Petition for *Inter Partes* review of U.S. Patent No. 10,652,111 (“the Juniper Petition”). The Patent Trial and Appeal Board (“Board”) instituted *Cisco Systems, Inc. v. Orckit Corp.*, IPR2023-00554 (“Cisco IPR”) on September 20, 2023. Pursuant to 35 U.S.C. §315(c) and 37 C.F.R. §42.122(b), Juniper requests institution of *inter partes* review and joinder with the Cisco IPR. As detailed below, doing so won’t unduly burden or prejudice the parties to the Cisco IPR and will efficiently resolve the question of the validity of U.S. Patent No. 10,652,111 (“the ’111 Patent”) in a single proceeding.

II. STATEMENT OF MATERIAL FACTS

1. On July 22, 2022, Patent Owner, Orckit Corporation (“Orckit”) filed a civil action against Cisco Systems, Inc. asserting four patents, including the ’111 Patent.¹

2. Cisco filed the Cisco IPR on February 21, 2023.

3. On July 28, 2023, Patent Owner filed a civil action against Arista Networks, Inc. asserting three patents, including the ’111 Patent.²

¹ *Orckit Corporation v. Cisco Systems, Inc.*, No. 2:22-cv-00276 (E.D. Tex.).

² *Orckit Corporation v. Arista Networks, Inc.*, No. 1:23-cv-00821 (D. Del.).

4. On July 31, 2023, Patent Owner filed a civil action against Juniper asserting three patents, including the '111 Patent.³

5. The Board instituted trial in the Cisco IPR on September 20, 2023.⁴

III. STATEMENT OF REASONS FOR RELIEF REQUESTED

A. Legal Standard

The Board may join as a party to an instituted IPR any person who has properly filed a petition for IPR that warrants institution.⁵ Any request for joinder must be filed “no later than one month after the institution date of any inter partes review for which joinder is requested.”⁶ The statute requires the Board to determine whether the joinder applicant’s petition warrants institution under §314, and, to effect joinder, requires the Director to exercise her discretion to decide whether to join the joinder applicant.⁷ Applying this standard, the Board first analyzes the petition’s merits and whether it should exercise discretion to deny

³ *Orckit Corporation v. Juniper Networks, Inc.*, No. 1:23-cv-00822 (D. Del.).

⁴ *See Cisco Systems, Inc. v. Orckit Corp.*, IPR2023-00554, Paper 8 (P.T.A.B. Sept. 20, 2023).

⁵ 35 U.S.C. §315(c).

⁶ 37 C.F.R. §42.122(b).

⁷ *Facebook, Inc. v. Windy City Innovations, LLC*, 973 F.3d 1321, 1332 (Fed. Cir. 2020).

institution.⁸ Then, the Board considers the *Kyocera* factors, which include: the reasons why joinder is appropriate, whether the petition presents new grounds of unpatentability, what impact joinder will have on the trial schedule, and how simplification of briefing and discovery might occur to minimize any trial schedule impact.⁹

B. Petitioner’s Motion for Joinder is Timely.

Juniper files this Motion for Joinder within one month of the September 20, 2023 institution decision of the Cisco IPR.

C. The Board Shouldn’t Exercise Discretion Under §314(a).

The Juniper Petition details the reasons why the Board shouldn’t exercise its discretion to deny Juniper’s first challenge to the ’111 Patent. The Board previously found the Cisco IPR merited institution. The Juniper Petition relies on the same evidence presented in the Cisco IPR including Cisco’s expert testimony.¹⁰ Institution of the Juniper Petition is therefore appropriate for similar reasons.

⁸ See, e.g., *AT&T Servs., Inc. v. Broadband iTV, Inc.*, IPR2021-00556, Paper No. 14 (P.T.A.B. Aug. 25, 2021).

⁹ See *Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper No. 15 at 4 (P.T.A.B. Apr. 24, 2013).

¹⁰ See, e.g., *OpenSky Indus., LLC v. VLSI Tech. LLC*, IPR2021-01064, Paper 102 at 9 (P.T.A.B. Oct. 4, 2022) (acknowledging the propriety of “copycat” petitions utilizing the same evidence including refiled declarations).

D. All Four *Kyocera* Factors Weigh in Favor of Joinder.

Analysis of the four *Kyocera* factors shows that they all favor joinder.

First, the Juniper Petition is substantively identical to the Cisco IPR and relies on identical exhibits. The Juniper Petition includes non-substantive modifications specific to the formalities of a different party filing the petition, as well as an explanation for why the Board shouldn't exercise discretion to deny Juniper's Petition. And should Cisco cease participation, joinder allows Juniper to continue participating to resolve questions surrounding the validity of the '111 Patent in view of the petitioned unpatentability grounds. Good cause therefore exists for joining this proceeding with the Cisco IPR.

Second, Juniper doesn't present new grounds of unpatentability. The same claims of the same patent are challenged under the same unpatentability grounds as the Cisco IPR. The Board "routinely grants motions for joinder where the party seeking joinder introduces identical arguments and the same grounds raised in the existing proceeding."¹¹ And because this is Petitioner's first challenge to the '111

¹¹ *BlackBerry Corp. v. Uniloc 2017 LLC*, IPR2019-01283, Paper 10 at 8 (P.T.A.B. Nov. 5, 2019) (quoting *Samsung Elecs., Co. v. Raytheon Co.*, IPR2016-00962, Paper 12 at 9 (P.T.A.B. Aug. 24, 2016)).

Patent, there's no "potential for abuse of the review process by repeated attacks on patents."¹²

Third, Patent Owner won't have new issues to address due to the substantively identical nature of the Juniper Petition and the Cisco IPR. Patent Owner's Response will address the issues presented in the Cisco IPRs and therefore address the same issues presented in the Juniper Petition. Juniper relies on the same expert and an identical declaration. No additional expert depositions will occur due to the grant of this motion. Joining this proceeding with the Cisco IPR therefore won't impact the Cisco IPR trial schedule in a meaningful way.¹³ And to the extent any small adjustment of the trial schedule occurs, this doesn't provide a basis for denying Juniper's Motion for Joinder.

Fourth, to simplify briefing and discovery, Juniper agrees to an "understudy" role in the Cisco IPR. Juniper specifically agrees as follows:

¹² *Apple Inc. v. Uniloc 2017, LLC*, IPR2020-00854, Paper 9 at 5 (P.T.A.B. Oct. 28, 2020) (precedential) (quoting *General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 16–17 (P.T.A.B. Sept. 6, 2017) (precedential)).

¹³ *Sony Corp. v. Memory Integrity, LLC*, IPR2015-01353, Paper 11 at 6 (P.T.A.B. Oct. 15, 2015) (granting motion for joinder and instituting IPR where "joinder should not necessitate any additional briefing or discovery from Patent Owner beyond that already required in [the original IPR]").

1. Juniper won't make any substantive filings, and Juniper agrees that Cisco alone will be responsible for all substantive petitioner filings in the joined proceeding;
2. Juniper agrees to be bound by all filings by Cisco in the joined proceeding, except for filings regarding termination and settlement;
3. Juniper must obtain prior Board authorization to file any paper or to take any action on its own in the joined proceeding;
4. Juniper shall not be permitted to raise any new grounds not already instituted by the Board in the Cisco IPR, or introduce any argument or discovery not already introduced by Cisco;
5. Juniper shall be bound by any agreement between Patent Owner and Cisco concerning discovery and depositions;
6. Juniper will not cross-examine or defend any witness at deposition;
7. Cisco will be responsible for any oral hearing presentation, including the preparation of demonstrative exhibits.

Should Cisco cease participation in the proceeding:

8. Juniper would assume a primary role, meaning it would take over the role previously filled by Cisco.

The Board has granted motions for joinder with the same conditions.¹⁴ Because Juniper accepts this “understudy” role and presents substantively identical unpatentability grounds relying on the same prior art combinations against the same claims, minimal complications or delay resulting from joinder should occur.¹⁵ And resolving all issues in a single proceeding simplifies briefing and discovery issues.

IV. CONCLUSION

For these reasons, Juniper respectfully requests institution of the Juniper Petition and joinder with the Cisco IPR.

Respectfully submitted,

Date: October 11, 2023

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¹⁴ *Ericsson Inc. v. Uniloc 2017 LLC*, IPR2020-00376, Paper 16 at 10 (P.T.A.B. May 22, 2020) (granting a motion for joinder with the same conditions); *see also Apple Inc. v. INVT SPE LLC*, IPR2019-00958, Paper 9 at 5-8 (P.T.A.B. May 30, 2019) (granting IPR where petitioners requested an “understudy” role).

¹⁵ *See Apple*, IPR2019-00958, Paper 9 at 5-8; *Sony*, IPR2015-01353, Paper 11 at 6-7 (granting IPR and motion for joinder because “joinder would increase efficiency by eliminating duplicative filings and discovery, and would reduce costs and burdens on the parties as well as the Board” where petitioners agreed to an “understudy” role).