

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC. and FORTINET, INC.,
Petitioners,

v.

INFOEXPRESS INC.,
Patent Owner.

IPR2024-00539
U.S. Patent No. 8,051,460

**PATENT OWNER'S UNOPPOSED MOTION
TO EXCUSE LATE ACTION**

Exhibit Number	Description
2001	Declaration of Dr. Eric Cole
2002	Curriculum Vitae of Dr. Eric Cole
2003	Declaration of Stacey C. Lum
2004	Intentionally Left Blank
2005	U.S. Provisional App. No. 60/505,582
2006	U.S. Provisional App. No. 60/513,080
2007	Declaration of Hugh Smith, Ph.D.
2008	Curriculum Vitae of Hugh Smith, Ph.D.
2009	Conception of the '460 Patent
2010	Constructive Reduction to Practice of the '460 Patent
2011	LAN Based Policy Enforcement Engineering Specification
2012	Metadata for Exhibit 2011
2013	CyberGatekeeper Policy Manager
2014	Metadata for Exhibit 2013
2015	Internal InfoExpress Correspondence
2016	Internal InfoExpress Correspondence
2017	Internal InfoExpress Correspondence
2018	Internal InfoExpress Correspondence
2019	Internal InfoExpress Correspondence
2020	Internal InfoExpress Correspondence
2021	Internal InfoExpress Correspondence
2022	Correspondence with Globe Tech
2023	Email attachment to Exhibit 2022
2024	Internal InfoExpress Correspondence
2025	Correspondence with Meetinghouse
2026	Draft Meetinghouse Agreement
2027	Internal InfoExpress Correspondence
2028	Draft Meetinghouse Agreement
2029	Internal InfoExpress Correspondence
2030	Draft Meetinghouse Agreement
2031	Draft Meetinghouse Agreement
2032	Internal InfoExpress Correspondence
2033	Draft Meetinghouse Agreement
2034	Draft Meetinghouse Agreement
2035	Draft Meetinghouse Agreement
2036	Internal InfoExpress Correspondence
2037	Draft Meetinghouse Agreement

Exhibit Number	Description
2038	Draft Meetinghouse Agreement
2039	Internal InfoExpress Correspondence
2040	Draft Meetinghouse Agreement
2041	Draft Meetinghouse Agreement
2042	Draft Meetinghouse Agreement
2043	Draft Meetinghouse Agreement
2044	Internal InfoExpress Correspondence
2045	Draft Meetinghouse Agreement
2046	Draft Meetinghouse Agreement
2047	Internal InfoExpress Correspondence
2048	Correspondence with Globe Tech
2049	Correspondence with Globe Tech
2050	Internal InfoExpress Correspondence
2051	Correspondence with Globe Tech
2052	Correspondence with Globe Tech
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2054	Correspondence with Globe Tech
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2056	Draft Globe Tech Agreement
2057	Draft Globe Tech Agreement
2058	Draft Globe Tech Agreement
2059	Draft Globe Tech Agreement
2060	Draft Globe Tech Agreement
2061	Draft Globe Tech Agreement
2062	Draft Globe Tech Agreement
2063	Correspondence with Globe Tech
2064	Draft Globe Tech Agreement
2065	Correspondence with Globe Tech
2066	Network Device Configuration API Engineering Specification
2067	Correspondence with Globe Tech
2068	Correspondence with Globe Tech
2069	Network Device Configuration API Engineering Specification
2070	Network Device Configuration API Engineering Specification
2071	Correspondence with Globe Tech
2072	Network Device Configuration API Engineering Specification
2073	Network Device Configuration API Engineering Specification
2074	Correspondence with Globe Tech

Exhibit Number	Description
2075	Correspondence with Globe Tech
2076	Correspondence with Globe Tech
2077	Correspondence with Globe Tech
2078	Correspondence with Globe Tech
2079	Email attachment to Exhibit 2078
2080	Correspondence with Globe Tech
2081	Correspondence with Globe Tech
2082	Correspondence with Globe Tech
2083	Correspondence with Globe Tech
2084	Correspondence with Globe Tech
2085	Correspondence with Globe Tech
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2101	Correspondence with Globe Tech
2102	Correspondence with Globe Tech
2103	Correspondence with Globe Tech
2104	Correspondence with Globe Tech
2105	Correspondence with Globe Tech
2106	Correspondence with Globe Tech
2107	Correspondence with Globe Tech
2108	Internal InfoExpress Correspondence
2109	Correspondence with Globe Tech
2110	Correspondence with Globe Tech
2111	Correspondence with Globe Tech

Exhibit Number	Description
2112	Correspondence with Globe Tech
2113	Internal InfoExpress Correspondence
2114	Correspondence with Globe Tech
2115	Email attachment to Exhibit 2114
2116	Correspondence with Globe Tech
2117	Internal InfoExpress Correspondence
2118	Correspondence with Globe Tech
2119	Correspondence with Globe Tech
2120	Correspondence with Globe Tech
2121	Correspondence with Globe Tech
2122	Correspondence with Globe Tech
2123	Correspondence with J. Ong
2124	Correspondence with Globe Tech
2125	Correspondence with Globe Tech
2126	Correspondence with Globe Tech
2127	Correspondence with Globe Tech
2128	Correspondence with Globe Tech
2129	Correspondence with Globe Tech
2130	Correspondence with Globe Tech
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2146	Correspondence with Globe Tech
2147	Correspondence with Globe Tech
2148	Correspondence with J. Ong

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2149	Correspondence with Globe Tech
2150	Correspondence with J. Ong
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2152	Correspondence with J. Ong
2153	Correspondence with Globe Tech
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2159	Correspondence with Globe Tech
2160	Correspondence with Globe Tech
2161	Correspondence with J. Ong
2162	Correspondence with Globe Tech
2163	Correspondence with C. Tsai
2164	Correspondence with Globe Tech
2165	Correspondence with Globe Tech
2166	Correspondence with Globe Tech
2167	Correspondence with Globe Tech
2168	Correspondence with Globe Tech
2169	Correspondence with Globe Tech
2170	Correspondence with Globe Tech
2171	Correspondence with Globe Tech
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2173	Correspondence with Globe Tech
2174	Correspondence with Globe Tech
2175	Correspondence with Globe Tech
2176	Correspondence with Globe Tech
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2178	Correspondence with Globe Tech
2179	Correspondence with Globe Tech
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2189	Correspondence with C. Tsai
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2191	Correspondence with Globe Tech
2192	Correspondence with Globe Tech
2193	Correspondence with Globe Tech
2194	Correspondence with Globe Tech
2195	Correspondence with Globe Tech
2196	Correspondence with Globe Tech
2197	Correspondence with Globe Tech
2198	Correspondence with J. Ong
2199	Correspondence with C. Tsai
2200	Correspondence with J. Ong
2201	Cisco Switch Feature Support Matrix
2202	Correspondence with M. Banin
2203	Correspondence with A. Lee
2204	Correspondence with M. Banin
2205	Correspondence with M. Banin
2206	Correspondence with M. Banin
2207	Correspondence with M. Banin
2208	Correspondence with M. Banin
2209	Correspondence with M. Banin
2210	Correspondence with M. Banin
2211	Correspondence with patent counsel
2212	Correspondence with patent counsel
2213	Correspondence with patent counsel
2214	Correspondence with patent counsel
2215	Correspondence with patent counsel
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2219	Correspondence with patent counsel
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2221	Correspondence with patent counsel
2222	Correspondence with patent counsel

Exhibit Number	Description
2223	Correspondence with patent counsel
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2227	Correspondence with patent counsel
2228	Correspondence with patent counsel
2229	Correspondence with patent counsel
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2239	Correspondence with patent counsel
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2241	Correspondence with patent counsel
2242	Correspondence with patent counsel
2243	Correspondence with patent counsel
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2245	Correspondence with patent counsel
2246	Correspondence with patent counsel
2247	Correspondence with patent counsel
2248	Correspondence with patent counsel
2249	Correspondence with patent counsel
2250	Correspondence with patent counsel
2251	Correspondence with patent counsel
2252	Correspondence with patent counsel
2253	Correspondence with patent counsel
2254	Correspondence with patent counsel
2255	Correspondence with patent counsel
2256	Correspondence with patent counsel
2257	Correspondence with patent counsel
2258	Correspondence with patent counsel
2259	Correspondence with patent counsel

Exhibit Number	Description
2260	Correspondence between S. Lum and A. Lee
2261	Correspondence between S. Lum and A. Lee
2262	Correspondence with patent counsel
2263	Correspondence with patent counsel
2264	Correspondence with patent counsel
2265	Correspondence with patent counsel
2266	Correspondence with patent counsel
2267	Correspondence with patent counsel
2268	Correspondence with patent counsel
2269	Correspondence with patent counsel
2270	Correspondence with patent counsel
2271	Correspondence with patent counsel
2272	Windows 2000 Registry – 2nd Edition – Little Black Book
2273-2410	Intentionally Left Blank
2411	Tim Greene, InfoExpress Simplifies Security Devices, NetworkWorld (Dec. 6, 2004), available at https://www.networkworld.com/article/875004/lan-waninfoexpress-simplifies-security-devices.html
2412	InfoExpress's Objections and Responses to Cisco's First Set of Interrogatories (Nos. 1-12), served in InfoExpress Inc. v. Cisco Systems, Inc., Case No. 4:23-cv-2698-YGR (N.D. Cal.).
2413	Cisco Systems, Inc., Network Admission Control White Paper (2004).
2414	Correspondence with Cisco
2415	Email attachment to EX2414
2416	Correspondence with Cisco
2417	Email attachment to EX2416
2418	Correspondence with Cisco
2419	Correspondence with Cisco
2420	Correspondence with Cisco and KeyLabs
2421	Email attachment to EX2420
2422	Correspondence with Cisco
2423	Correspondence with Cisco
2425	Excerpt from InfoExpress Inc.'s Disclosure of Asserted Claims and Infringement Contentions per Patent L.R. 3-1 and 3-2, Exhibit B, served in InfoExpress Inc. v. Cisco Systems, Inc., Case No. 4:23-cv-2698-YGR (N.D. Cal.).

Exhibit Number	Description
2426	Intentionally Left Blank
2427	Declaration of Aaron R. Striegel, PhD
2428	Intentionally Left Blank
2429	Declaration of Yuhshiow Alice Lee
2430	LAN Based Policy Enforcement Engineering Specification
2431	Metadata for EX2430
2432	LAN Based Policy Enforcement Engineering Specification
2433	Metadata for EX2432
2434	Internal InfoExpress Correspondence
2435	Internal InfoExpress Correspondence
2436	Additional Metadata for EX2011
2437	LAN Based Policy Enforcement Engineering Specification
2438	Metadata for EX2437
2439	Internal InfoExpress Correspondence
2440	Internal InfoExpress Correspondence
2441	Internal InfoExpress Correspondence
2442	Internal InfoExpress Correspondence
2443	Design Specifications
2444	Design Specifications
2445	RADIUS Protocol Spoofing Vulnerability (Blast-RADIUS) July 2024
2446	Tim Greene, Deceiving Ciscos NAC (April 3, 2007)
2447	Hasham Ud-Din Qazi, Comparative Study of Network Access Control Technologies
2448	Thumann and Rocher, Hacking the Cisco NAC Framework Blackhat USA 2007 Whitepaper
2449	Deposition of Henry Houh, December 4, 2024
2450	Dkt 121 – Claim Construction Order dated September 25, 2024 [InfoExpress, Inc. v, Cisco Systems, Inc. [4:23-cv-02698-YGR]
2451	Mobile Agent Deployment Guide
2452	Reference Manual
2453	Server User’s Guide
2454	CGX 2.3 – Standalone Guide
2455	CGX 2.2 Complete Guide
2456	CGX Appliance Specifications
2457	Solutions Guide
2458	Intentionally Left Blank

Exhibit Number	Description
2459	CGX Access Deployment Guide
2460	Installation Guide v9.0
2461	About CGX
2462	CGX 1.0 Frequently Asked Questions
2463	CGX Access - Frequently Asked Questions
2464	CGX Access Guide
2465	Solutions Guide
2466	CGX 2.2 Complete Guide
2467	Solutions Guide
2468	Installing CGX
2469	Correspondence with Scotia Bank
2470	Correspondence with Cisco
2471	Internal InfoExpress Correspondence
2472	Cisco Announces Continued Momentum within Network Admission Control Industry Initiative
2473	Correspondence with Cisco
2474	Correspondence with Cisco
2475	Cisco NAC and CyberGatekeeper Technical White Paper
2476	Internal Cisco Correspondence
2477	Correspondence with Cisco
2478	LAN Technology Presentation
2479	Correspondence with Cisco
2480	NAC Overview
2481	Correspondence with Cisco
2482	Correspondence with Cisco
2483	Partner Solution Brief – NAC Deployment
2484	Cisco NAC + CyberGatekeeper vs. Competitive Enforcement Solutions
2485	Correspondence Between Cisco, InfoExpress and Burton Group
2486	RSA Conference 2005 Slide Deck
2487	Internal InfoExpress Correspondence
2488	RSA Conference 2005 Slide Deck
2489	Correspondence with Cisco
2490	Cisco NAC + CyberGatekeeper vs. Competitive Enforcement Solutions
2491	Partner Solution Brief – NAC Deployment
2492	Correspondence with Cisco

Exhibit Number	Description
2493	Internal InfoExpress Correspondence
2494	NAC IVT Test Plan/Report
2495	Correspondence with Cisco
2496	Correspondence with Cisco
2497	Virtual Machine Preparation for Cisco
2498	Internal InfoExpress Correspondence
2499	Virtual Machine Preparation for Cisco
2500	InfoExpress NAC Demo
2501	Internal InfoExpress Correspondence
2502	Protected Network, ScienceDirect Topics
2503	Correspondence with Cisco
2504	Introduction to CyberGatekeeper
2505	Correspondence with Cisco
2506	Correspondence with Cisco
2507	Correspondence with Cisco
2508	Correspondence with Cisco
2509	Correspondence with Cisco
2510	Internal Cisco Correspondence
2511	Correspondence with Cisco
2512	Internal Cisco Correspondence
2513	Correspondence with Cisco
2514	Internal InfoExpress Correspondence
2515	Internal Cisco Correspondence
2516	Correspondence with Cisco
2517	Correspondence with Cisco
2518	Intentionally Left Blank
2519	NAC2 Beta Deployment Guide
2520	Internal InfoExpress Correspondence
2521	U.S. Patent No. 5,987,611
2522	Request for Comment: 2865
2523	Internal InfoExpress Correspondence
2524	Winning with CyberGatekeeper from InfoExpress
2525	Tim Greene, Burning NAC questions – Part 2, Network World (Oct 17, 2007)
2526	Paul Roberts, Black Hat: NAC Solutions Vulnerable to Attack, ComputerWorld (Aug 3, 2006)
2527	Correspondence with Cisco

Exhibit Number	Description
2528	Memorandum re: Product Announcement
2529	LAN Technology PowerPoint
2530	Posture Plugin Development
2531	Product Guidelines
2532	Technical File Information
2533	Project File
2534	Project File
2535	Project File
2536	Project File
2537	Project File
2538	Project File
2539	Project File
2540	Project File
2541	Technology Overview
2542	Policy Manager Reference Manual
2543	CGS Reference Manual
2544	LAN Enforcement Module Reference Manual
2545	EAP Enforcement Module Reference Manual
2546	8021X Authentication Procedures
2547	Internal InfoExpress Correspondence
2548	Correspondence with Cisco
2549	Cisco Release Notes
2550	Cisco Trust Agent Administrator Guide
2551	Internal InfoExpress Correspondence
2552	NAC AVP Specification
2553	NAC Architecture Overview
2554	HCAP
2555	Correspondence with GTI
2556	Engineering Specifications
2557	LAN Based Policy Enforcement Components
2558	LAN Based Policy Enforcement Engineering Specifications
2559	LAN Based Policy Enforcement Engineering Specifications
2560	LAN Based Policy Enforcement Components
2561	LAN Based Policy Enforcement Engineering Specifications
2562	LAN Based Policy Enforcement Engineering Specifications
2563	LAN Based Policy Enforcement Components
2564	Supplemental Declaration of Stacey Lum

Exhibit Number	Description
2565	Supplemental Declaration of Dr. Eric Cole
2566	Tanenbaum Excerpts
2567	IEEE 802.1 1x (2001)
2568	Diligence Calendar
Replacement 2427	Declaration of Aaron R. Striegel, Ph.D.
2569	2025-01-16 Border to Schwerin email chain
2570	Declaration of Andrew Schwerin, Esq.

I. Introduction

On January 13, 2025, Patent Owner InfoExpress filed its Patent Owner Response and supporting exhibits, including the Declaration of Aaron R. Striegel, Ph.D. (EX2427). *See* EX2570, ¶4. Dr. Striegel's declaration was to be accompanied by a claim chart, which showed how InfoExpress's product, the CG LAN, embodies certain claims of the 460 Patent. *Id.*

Due to counsel's inadvertent error, the Dr. Striegel's declaration did not include that claim chart. *Id.*, ¶¶5-6. Counsel realized the mistake on January 14—one day after filing. *Id.*, ¶6. Upon discovering his mistake, counsel promptly caused his paralegal to email the Board; in turn, the Board advised him to file this motion. *Id.*, ¶6; EX2569. To further remedy the mistake, on January 15, InfoExpress's counsel emailed Petitioner's counsel, and (1) notified Petitioner's counsel of his mistake, (2) attached a copy of the claim chart, (3) informed Petitioner's counsel that InfoExpress would be filing the present Motion to Excuse Late Filing, and (4) asked them whether they would oppose such a motion. EX2570, ¶7; EX2569. On January 16, Petitioner's counsel responded that they would not oppose this motion. EX2570, ¶8; EX2569. On January 21, and in accordance with the Board's January 15 email, InfoExpress's counsel served a copy of a Replacement Exhibit 2427, which included the claim chart. EX2570, ¶9. In that same email communication, InfoExpress offered to Petitioner an extension

of one day for the filing of Petitioner’s Reply Brief, moving that date from April 8 to April 9, 2025. *Id.*, ¶9.

The Board may excuse a party’s late action “on a showing of good cause or upon a Board decision that consideration on the merits would be in the interests of justice.” 37 C.F.R. § 42.5(c)(3). For the reasons discussed below, Patent Owner respectfully requests that the Board exercise its discretion, to excuse the late filing of the claim chart accompanying Dr. Striegel’s declaration, and to allow InfoExpress to file a Replacement EX2427. The missing claim chart can be found at Replacement EX2427, pages 92-111.

II. There is good cause to excuse Patent Owner’s late filing.

The determination of whether a party’s neglect is excusable “is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.” *Cf. Pioneer Investment Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993) (construing “excusable neglect” per Federal Rule of Civil Procedure 60(b)(1)). In determining whether to allow late filings, courts consider various factors including “the danger of prejudice to the [non-moving party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” *Id.*

There is good cause here to excuse counsel's inadvertent mistake. As to the first *Pioneer* factor, there is little to no prejudice to Petitioner here: They were provided the claim chart promptly, they were offered an extra day on their reply brief, and Petitioner's counsel does not oppose this Motion. As to the second *Pioneer* factor, nothing indicates that InfoExpress's mistake will delay this IPR any further. The third and final *Pioneer* factor also favors relief because InfoExpress's error was unintentional and because InfoExpress acted in good faith. After learning of his error, InfoExpress's counsel promptly acted to remedy his mistake by notifying the Board and Petitioner of the same. EX2570, ¶¶6-7.

Under similar circumstances, the Director applied the *Pioneer* factors to excuse a late filing. *See, e.g., Mitsubishi Cable Indus., Ltd. v. Goto Denshi Co.*, IPR2015-01108, Paper 28 at 13-14 (May 3, 2017) (finding good cause to grant a 7-day extension where "good faith conduct [by Patent Owner's attorneys], ... weigh[ed] in favor of granting the relief" and "there was no evidence of prejudice").

III. It is in the interests of justice to consider the accompanying claim chart to the Striegel Declaration.

In the event the Board finds that InfoExpress's reasons for the delay do not suffice for good cause, Patent Owner respectfully requests that the Board excuse

the late filing in the interests of justice.¹ InfoExpress has done a substantial amount of work on its Patent Owner Response (Paper Nos. 24, 25), including on the Striegel Declaration and other materials. The missing claim chart makes clear how InfoExpress’s CG LAN embodies certain claims of the 460 Patent. In other words, it shows precisely how certain features of the CG LAN embody and/or practice certain elements of the 460 Patent. This is legally relevant to showing a nexus between the objective evidence of non-obviousness and the claims of the ‘460 Patent. *See, e.g., Volvo Penta of the Ams., LLC v. Brunswick Corp.*, 81 F.4th 1202, 1210 (Fed. Cir. 2023) (cited in Paper No. 25 at 39-40).

To be sure, the as-filed Striegel Declaration discusses how the CG LAN embodies certain elements of the 460 Patent—for example, how a virtual machine (VM) demonstration of the CG LAN showed its ability to obtain and analyze certain endpoint criteria. *See, e.g., EX2427* at ¶¶68-70. This showed how the CG LAN could obtain and analyze “system data” and thus how it “appl[ied] a security policy to the access device.” But the missing claim chart sets out a full, element-

¹ The Board has considered prejudice (to the non-movant) as legally relevant to this inquiry. *See Westinghouse Air Brake Tech’s Corp. v. Siemens Indus., Inc.*, IPR2017-02044, Paper 16 at 3 (PTAB Feb. 26, 2018). To the extent such prejudice is relevant here, InfoExpress incorporates its prior points made above.

by-element analysis in an easy-to-follow claim chart. *See* Replacement EX2427 at 93-111. Having this claim chart of record in this IPR would make the Board's and parties' work easier.

IV. Conclusion

For these reasons, InfoExpress respectfully requests that the Board grant its motion to excuse late action and allow it to replace Exhibit 2427.

Respectfully submitted,

Dated: January 21, 2025 Mailing address for all correspondence: Saul Ewing LLP Centre Square West 1500 Market Street, 38th Floor Philadelphia, PA 19102-2186	<u>/Brian R. Landry/</u> Brian R. Landry (Reg. No. 62,074) Saul Ewing LLP 131 Dartmouth Street, Suite 501 Boston, MA 02116 Tel: (617) 912-0969 Brian R. Michalek (Reg. No. 65,816) Saul Ewing LLP 161 North Clark Street, Suite 4200 Chicago, IL 60601 Tel: (312) 876-7151 Joseph M. Kuo (Reg. No. 38,943) Saul Ewing LLP 161 North Clark Street, Suite 4200 Chicago, IL 60601 Tel: (312) 876-7151 Counsel for Patent Owner
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Certification of Service Under 37 C.F.R. § 42.6(e)(4)

The undersigned hereby certifies that the foregoing was served in its entirety by filing through the Patent Trial and Appeal Board P-TACTS, as well as providing a courtesy copy via e-mail to the attorneys of record.

Date: January 21, 2025

/Brian R. Landry/
Reg. No. 62,074