

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUNIPER NETWORKS, INC.,
Petitioner,

v.

PORTSMOUTH NETWORK CORP.,
Patent Owner.

Case No. IPR2024-00893
Patent No. 6,917,986

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

EXHIBIT LIST

Exhibit	Description
1001	U.S. Patent No. 6,917,986 (“the ’986 patent”)
1002	Prosecution History of U.S. Patent No. 6,917,986
1003	Declaration of Dr. Bruce McNair (“McNair”)
1004	CV of Dr. Bruce McNair
1005	U.S. Patent No. 6,032,194 (“Gai”)
1006	U.S. Patent No. 6,330,229 (“Jain”)
1007	“IEEE Standard for Local Area Network MAC (Media Access Control) Bridges,” in ANSI/IEEE Std 802.1D, 1998 Edition, pp.1-373, 11 Dec. 1998, doi: 10.1109/IEEESTD.1998.95619.
1008	Declaration of David Ringle Relating to Exhibit 1007
1009	S. Varadarajan and T. Chiueh, “Automatic Fault Detection and Recovery in Real Time Switched <i>Ethernet</i> Networks,” IEEE INFOCOM ‘99. Conference on Computer Communications. Proceedings. Eighteenth Annual Joint Conference of the IEEE Computer and Communications Societies. The Future is Now (Cat. No.99CH36320), New York, NY, USA, 1999, pp. 161-169 vol.1, doi: 10.1109/INFCOM.1999.749264.
1010	Declaration of Rachel J. Watters Relating to Exhibit 1009
1011	Declaration of Gordon MacPherson Relating to Exhibit 1009
1012	Federal Judicial Caseload Statistics (2024) – District of Massachusetts
1013	<i>Portsmouth Network Corp. v. Juniper Networks, Inc.</i> , 1:23-cv-12201 (D. Mass.), Dkt. No. 14 (Proof of Service) (Sept. 28, 2023)
1014	<i>Portsmouth Network Corp. v. Juniper Networks, Inc.</i> , 1:23-cv-12201 (D. Mass.), Dkt. No. 61 (Amended Complaint) (Dec. 22, 2023)
1015	<i>Portsmouth Network Corp. v. Cisco Systems, Inc.</i> , 2:23-cv-00441 (E.D. Tex.), Dkt. No. 57 (Amended Complaint) (Mar. 11, 2024)

Exhibit	Description
1016	<i>Portsmouth Network Corp. v. Cisco Systems, Inc.</i> , 2:23-cv-00441 (E.D. Tex.), Dkt. No. 77 (ORDER Denying Motion to Stay Pending <i>Inter Partes</i> Review Proceedings Without Prejudice) (Oct. 21, 2024)
1017	<i>Portsmouth Network Corp. v. Cisco Systems, Inc.</i> , 2:23-cv-00441 (E.D. Tex.), Dkt. No. 36 (Docket Control Order) (Dec. 18, 2023)
1018	<i>Portsmouth Network Corp. v. Cisco Systems, Inc.</i> , 2:23-cv-00441 (E.D. Tex.), Dkt. No. 76 (Defendant's Motion to Stay Pending <i>Inter Partes</i> Review) (Oct. 18, 2024)

Patent Owner (“PO”) effectively concedes that the litigation between PO and Petitioner, in which no trial date has been set, does not raise any *Fintiv* issue. PO instead urges discretionary denial based on a different case, in a different court, involving a different defendant, with fewer claims at issue than this IPR addresses. *Portsmouth Network Corp. v. Cisco Systems, Inc.*, 2:23-cv-00441 (E.D. Tex.) (“Cisco case”). The PTAB already rejected PO’s *Fintiv* argument in Cisco’s IPR against the ’986 patent. IPR2024-00505, Paper 7, 9-16. *Fintiv* is even less applicable here because Petitioner is not party to the Cisco case.

I. *Fintiv* Factor 1 Is Neutral

PO concedes that, lacking evidence of how the court will rule on a stay motion in the Juniper case, this factor is neutral as to that case. POPR, 14.

In the Cisco case, the court recently denied Cisco’s motion to stay *without prejudice* to renewal after institution decisions in Cisco’s IPRs. EX1016. The Board has so far instituted three of Cisco’s four IPRs (IPR2024-00503, IPR2024-00505, IPR2024-00506); an institution decision in the fourth one (IPR2024-00954) is due in mid-December. When a stay is denied without prejudice, Factor 1 is neutral. *Samsung Elecs. Co. v. CardWare*, PGR2023-00012, Paper 14, 16 (Aug. 11, 2023) (“dismissal of the stay request was without prejudice...we find this factor to be neutral”); *Lyft v. Rideshare Displays*, IPR2021-01598, Paper 7, 9-10 (Apr. 11, 2022) (same).

II. *Fintiv* Factors 2 and 5 Disfavor Discretionary Denial Because Juniper Is Not a Defendant in the Cisco Litigation

PO's argument that "Petitioner is a [litigation] defendant" (POPR, 16) is a red herring because there is no trial date in the Juniper case. POPR, 14.

When a case *not* involving the petitioner (such as the Cisco case) is expected to be tried before the FWD, Factors 2 and 5 disfavor discretionary denial. For example, in *Dolby Labs. v. Intertrust Techs.*, IPR2020-00665, litigations over the challenged patent *not* involving the petitioner were set for trial eight months before the FWD—but (as here) no trial date was set for the litigation involving the petitioner. *Dolby*, Paper 11, 13. The Board found that Factors 2 and 5 "collectively weigh against" discretionary denial. *Id.*, 15-17, citing *Apple v. Fintiv*, IPR2020-00019, Paper 11, 13-14 (Mar. 20, 2020) (precedential) ("If a petitioner is unrelated to a defendant in an earlier court proceeding, the Board has weighed this fact against exercising discretion to deny institution."). Petitioner cited *Dolby* (Pet., 67); PO had no answer. Other Board decisions confirm that Factors 2 and 5 disfavor discretionary denial here. *Bose v. Koss*, IPR2021-00680, Paper 15, 14-19 (Oct. 13, 2021) (despite case against Apple set for trial six months before FWD, Factor 2 weighed "strongly against" discretionary denial, and Factor 5 weighed "against" it, because "Petitioner [Bose] is not a party to the Apple Litigation.>").

III. *Fintiv* Factor 3 Disfavors Discretionary Denial

Factor 3 indisputably disfavors discretionary denial as to the Juniper case.

As to the Cisco case, in Cisco’s IPR the Board found that Factor 3 weighed “strongly against discretionary denial” since the ID was due before the close of fact and expert discovery and the *Markman* hearing. IPR2024-00505, Paper 7, 13-14. While the ID in this IPR is due about four months later (in mid-December)—shortly after the Cisco case *Markman* hearing—litigation of patent validity in the Cisco case will remain at an early stage: fact discovery will still be ongoing, and expert discovery will not even have begun. EX1017. Given these facts, Factor 3 disfavors discretionary denial. *Bose*, 16 (Factor 3 “weighs against” discretionary denial, even after *Markman* hearing, where “[f]act discovery is not complete, and expert discovery has not started,” leaving “much work...[on] invalidity”).

IV. *Fintiv* Factor 4 Disfavors Discretionary Denial

This IPR’s inclusion of claims not at issue in the Cisco case (EX1018, 5) disfavors discretionary denial. *Bose*, 18 (Factor 4 disfavored denial where “the Apple Litigation will not address” all claims in the IPR). Even as to overlapping claims, PO offers ***no evidence*** that this IPR’s grounds overlap Cisco’s arguments, which in any event are speculative until trial. *Bose*, 18. Further, based on Cisco’s stipulation not to pursue its Gai-based IPR ground in court, the Board already found that Factor 4 disfavors denial in Cisco’s IPR. IPR2024-00505, Paper 7, 14. This IPR combines Gai with IEEE 1999, making it even more distinct. Pet., 70.

Respectfully submitted,
Date: November 12, 2024

/Michael N. Rader/
Michael N. Rader, Reg. No. 52,146

CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6(e)(4)

I certify that, on November 12, 2024, I will cause a copy of the foregoing document, including any exhibits filed therewith, to be served via electronic mail, as previously consented to by Patent Owner, upon the following:

James R. Nuttall
Katherine D. Cappaert

jnutall@steptoe.com
kcappaert@steptoe.com

Date: November 12, 2024

/MacAulay Rush/
MacAulay Rush
Paralegal
WOLF, GREENFIELD & SACKS, P.C.