

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUNIPER NETWORKS, INC.,
Petitioner,

v.

PORTSMOUTH NETWORK CORP.,
Patent Owner.

Case IPR2024-00893

Patent 6,917,986

PATENT OWNER'S SUR-REPLY

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Petitioner cherry-picks its arguments on the relevance and importance of *Portsmouth Network Corp. v. Cisco Systems, Inc.*, 2:23-cv-00441 (E.D. Tex.) (“Cisco litigation”) and IPR2024-00505 (“Cisco IPR”). Although Petitioner attempts to distance itself from the parallel Cisco litigation and Cisco IPR in Petitioner’s analysis of Fintiv factors 2 and 5, Petitioner cannot deny that it both relies on, and benefits from, the Cisco litigation and Cisco IPR’s earlier schedules. For the reasons below and in Patent Owner’s Preliminary Response (IPR2024-00893, Paper 6) (“POPR”), the *Fintiv* factors weigh in favor of discretionary denial.

I. Fintiv Factor 1 is Neutral

Patent Owner maintains that this factor is neutral. However, Petitioner’s acknowledgement that Cisco’s motion to stay was denied without prejudice is irrelevant as it has no bearing on whether Judge Gilstrap will grant a motion to stay. While Patent Owner cannot predict with certainty how Judge Gilstrap will rule on a motion to stay, Patent Owner notes that since 2012 Judge Gilstrap has granted a motion to stay in only 27% of cases. *See* EX2001. Accordingly, this factor is neutral.

II. Fintiv Factor 2 Favors Discretionary Denial

Petitioner argues that the schedule in the Cisco litigation is irrelevant to this factor for two reasons: (1) because Petitioner is not a defendant in the Cisco litigation and (2) there is no trial date in the Juniper case. IPR2024-00893, Paper 7, 2

(“Reply”). First, while Petitioner is not a defendant in the Cisco litigation, it is appropriate to consider the Cisco litigation because Petitioner benefits from the Cisco litigation’s earlier case schedule. For example, Petitioner relies on the same primary reference as the Cisco IPR and Petitioner’s arguments for every *Fintiv* factor references the Cisco litigation or the Cisco IPR. *See generally* Reply; *see also* Petition.

Second, as stated in the POPR, the projected statutory deadline for the final written decision in this IPR is around December 2025, which is approximately 6 months after the Cisco trial is set to occur. POPR, 14–15. Accordingly, this factor weighs against institution.

III. Fintiv Factor 3 Favors Discretionary Denial

The institution decision in this proceeding is expected by December 16, 2024, and by then the Patent Owner and Cisco will have already exchanged infringement and invalidity contentions, and completed claim construction briefing. POPR, 15–16. While Petitioner attempts to distance itself from the Cisco litigation, the Cisco litigation and Cisco IPR serves as a roadmap for Petitioner. Thus, while Petitioner itself may not have invested resources in the Cisco proceedings, it is invested in them and they directly impact this IPR. Accordingly, factor 3 weighs in favor of denial.

IV. Fintiv Factor 4 Favors Discretionary Denial

The Board in the Cisco IPR agreed with Patent Owner that this factor “should only marginally weigh against discretionary denial because Cisco’s stipulation is limited in nature.” IPR2024-00505, Paper 7 at 14. Unlike in the Cisco IPR, however, Petitioner provides no stipulation here. *See* Petition, 68; POPR, 16. Furthermore, Petitioner does not deny that there are overlapping issues between this IPR and the parallel district court proceeding. Reply, 3. Accordingly, factor 4 favors discretionary denial.

V. Fintiv Factor 5 Favors Discretionary Denial

While Petitioner is not a party to the Cisco litigation and Cisco IPR, as discussed above, Petitioner benefits from both of them. Accordingly, and for at least the same reasons as discussed in Patent Owner’s Preliminary Response, factor 5 weighs in favor of discretionary denial.

VI. Fintiv Factor 6 Favors Discretionary Denial

Petitioner’s failure to address factor 6 is telling because, as Patent Owner explained in its POPR, the Petition includes numerous arguments that lack merit. Accordingly, and for at least the same reasons as described in the POPR, factor 6 weighs against institution.

Date: November 15, 2024

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CERTIFICATION UNDER 37 C.F.R. § 42.24

Under the provisions of 37 C.F.R. § 42.24, the undersigned hereby certifies that the foregoing document contains 4,234 words, and thus complies with the word-count limits of 37 C.F.R. § 42.24.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PATENT OWNER'S PRELIMINARY RESPONSE was served on November 15, 2024 by filing this document through the P-TACTS platform as well as by delivering a copy via the delivery method indicated to the attorneys of record for the Petitioner as follows:

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