

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARISTA NETWORKS, INC.,

Petitioner,

v.

ORCKIT CORPORATION,

Patent Owner.

Case IPR2024-01237
Patent No. 7,545,740

PATENT OWNER'S PRELIMINARY RESPONSE

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2002	Pending claims in U.S. Pat. Appl. No. 11/123,801 as of July 28, 2008
2003	“About Orckit-Corrigent: Executive Summary,” 2011

I. INTRODUCTION

This is the third IPR filed against the '740 Patent using the same prior art, the same grounds, and the same arguments. The earlier filed IPR2023-00401 (joined with the copycat IPR2024-00026) has already resulted in a final written decision finding the challenged claims unpatentable. That decision has been appealed to the Federal Circuit. The results of that appeal will control not only the results of -00401 and -00026 IPRs, but likely the results of this IPR (if instituted) as well. Accordingly, Petitioner is asking the Board and PO to spend significant time and resources duplicating work that has already been done and that is unlikely to change the ultimate outcome of any of the three IPRs going forward. Moreover, the primary reference asserted in all three IPRs (Bruckman) was considered during prosecution by the Examiner.

Under 35 U.S.C. §325(d), the Board should deny institution. As discussed below, each of the *Becton, Dickinson* factors strongly supports the Board exercising its discretion to deny institution. At this point, the same prior art and arguments have been fully considered by the Office in previous matters. While the Petition includes a section on 325(d) (Pet., 85), the arguments against the Board exercising its discretion to deny institution under 325(d) are so weak, Petitioner did not even bother to address the *Becton, Dickinson* factors.

Accordingly, the Board should exercise its discretion to deny institution under 352(d).

II. BACKGROUND

A. Procedural History

This is the third IPR filed against the '740 Patent. On January 9, 2023, Cisco Systems, Inc. filed IPR2023-00401 challenging claims 1-20 of the '740 Patent. On October 10, 2023, Juniper Networks filed IPR2024-00026 against the '740 Patent using identical prior art and grounds to those in IPR2023-00401. The -00026 IPR was later joined with the -00401 IPR. A final written decision issued in IPR2024-00401 on October 22, 2024 finding all challenged claims unpatentable. IPR2024-00401, Paper 39. That decision is currently on appeal.

This IPR does not present new issues that were not previously before the Board. Instead, this IPR is largely identical to the -00401 and -00026 IPRs, using the same grounds and same references as the previous IPRs. Almost all of the merits arguments appear the same as the -00401 IPR. *Compare* Pet., 16-80 *with* IPR2023-00401, Pet., 20-79. Thus, the Federal Circuit's decision on appeal in the -00401 IPR will almost certainly control the outcome of this IPR if instituted.

The '740 Patent is asserted in *Orckit Corporation v. Arista Networks, Inc.*, Civil Action No. 1-23-cv-00821 (D. Del., Jul. 28, 2023). (Ex. 1012) and *Orckit Corporation v. Juniper Networks, Inc.*, Civil Action No. 1-23-cv-00822 (D. Del.,

July 23, 2023). Those cases are stayed pending institution of these IPRs.

The '740 Patent was also asserted in *Orckit Corporation v. Cisco Systems, Inc.*, Case No. 2:22-cv-00276 (E.D. Tex. July 22, 2022). That case was dismissed without prejudice.

B. The History Behind Orckit Corporation's Patents

Orckit Corporation is the current assignee of the '740 patent, which originated from the significant research and development conducted by Orckit Communications Ltd. (also known as Corrigent-Systems Ltd., referred to herein as "Orckit-Corrigent").

Orckit was founded in 1990 by Izhak Tamir and Eric Paneth. In September 1996, Orckit announced an Initial Public Offering (IPO) of 3.3 million ordinary shares at a public offering price of \$16.00; but its initial public offering on the Nasdaq over-the-counter exchange was postponed due to oversubscription because of excess public demand for its shares. See <https://en.wikipedia.org/wiki/Orckit-Corrigent>).

Over the years, Orckit-Corrigent and its subsidiaries developed and sold products in a variety of telecommunications areas, including DSL, Packet Transport Networks (PTN), Carrier Ethernet technologies, PWE (Pseudo-Wire Emulation) technology, and Resilient Packet Ring (RPR) technology, which was developed and introduced to the market as the IEEE 802.17 Standard, part of the company's packet

transport technology. In 2007, Orckit-Corrigent launched its CM4000 PTN line of products, which were purchased and deployed by telecom providers worldwide, including leading Indian carrier Bharat Sanchar Nigam Ltd. (BSNL); T-Systems (Deutsche Telekom) in Germany; Tele2, a leading Pan-European Scandinavian Service Provider; redIT (formerly MetroNet) in Mexico, and others. At one time, Orckit-Corrigent had offices in Israel, US, India, Japan, Korea, Germany, Russia, Brazil, Mexico, Thailand, and the Philippines.

Over the years, Orckit-Corrigent invested over \$200M in research and development and developed an extensive patent portfolio practiced by its products, notably, the CM-4000 product family, which was a series of packet transport network switches (consisting of, among other products, the CM-4140, CM-4206 and CM-4314T/4314 models), and the CM-401x portfolio of switches that included the CM-4011, CM-4012 and CM-4013 products. Ex. 2003, [Orckit-Corrigent Executive Summary].

Orckit-Corrigent's products offered networking infrastructure for the delivery of residential, business, and mobile backhauling services in packet-based networks. By the early 2000s, Orckit-Corrigent was a pioneer in telecommunications, with revenues some years exceeded \$500M from sales to various tier 1 global telecommunications providers.

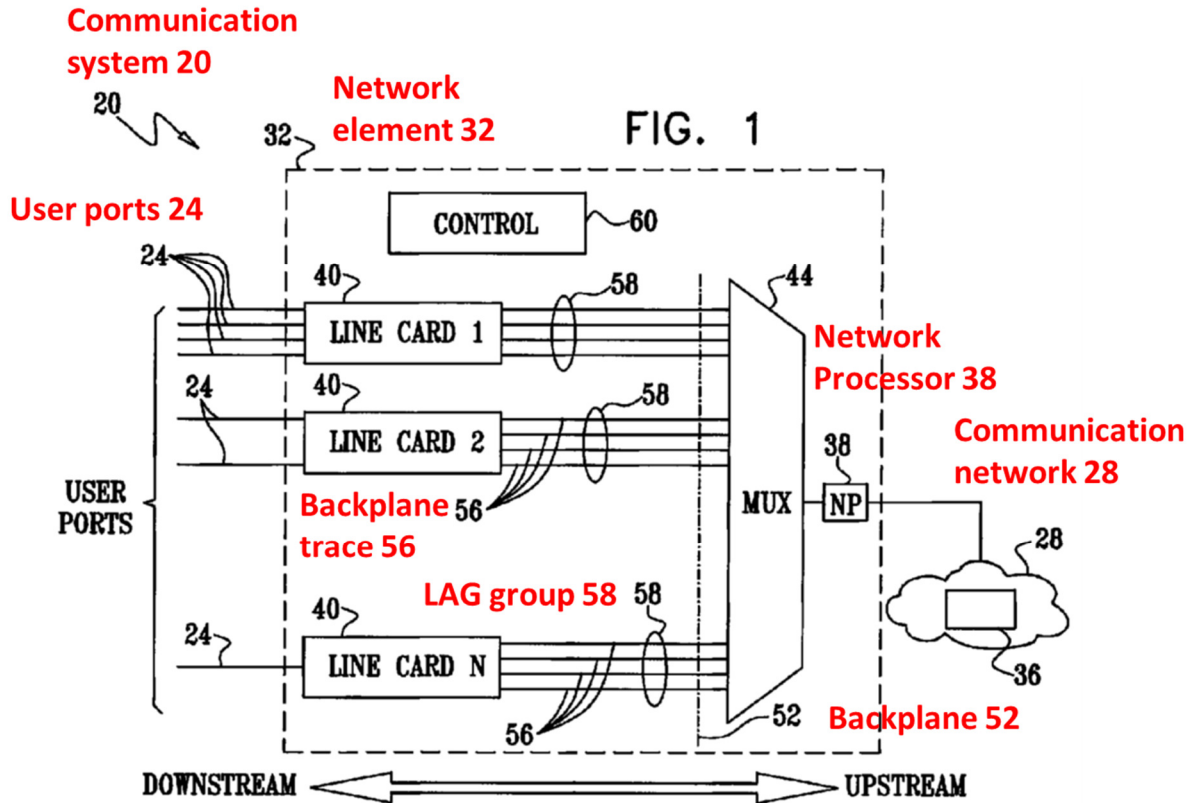
Despite its early success, following the “dot-com bust,” Orckit-Corrigent

found itself amassing ever increasing debt. In 2012, Orckit-Corrigent was ultimately forced to enter into debt restructuring/bankruptcy proceedings in Israel. In 2016, Orckit IP purchased all of Orckit-Corrigent's patents, including the '740 patent, through those proceedings. Orckit Corporation subsequently acquired a smaller set of Orckit-Corrigent's patents, including the '740 patent.

C. The '740 Patent

The '740 Patent is directed to two-way "link aggregation" in network elements of communication networks. Ex. 1001 ['740 Patent], Title, Abstract, 1:5-7. "Link aggregation (LAG) is a technique by which a group of parallel physical links between two endpoints in a data network can be joined together in a single logical link." Ex. 1001 ['740 Patent], 1:11-13. Users may connect to a communication network "through a network element, such as an access concentrator or aggregator for obtaining different data services." Ex. 1001 ['740 Patent], 1:34-36.

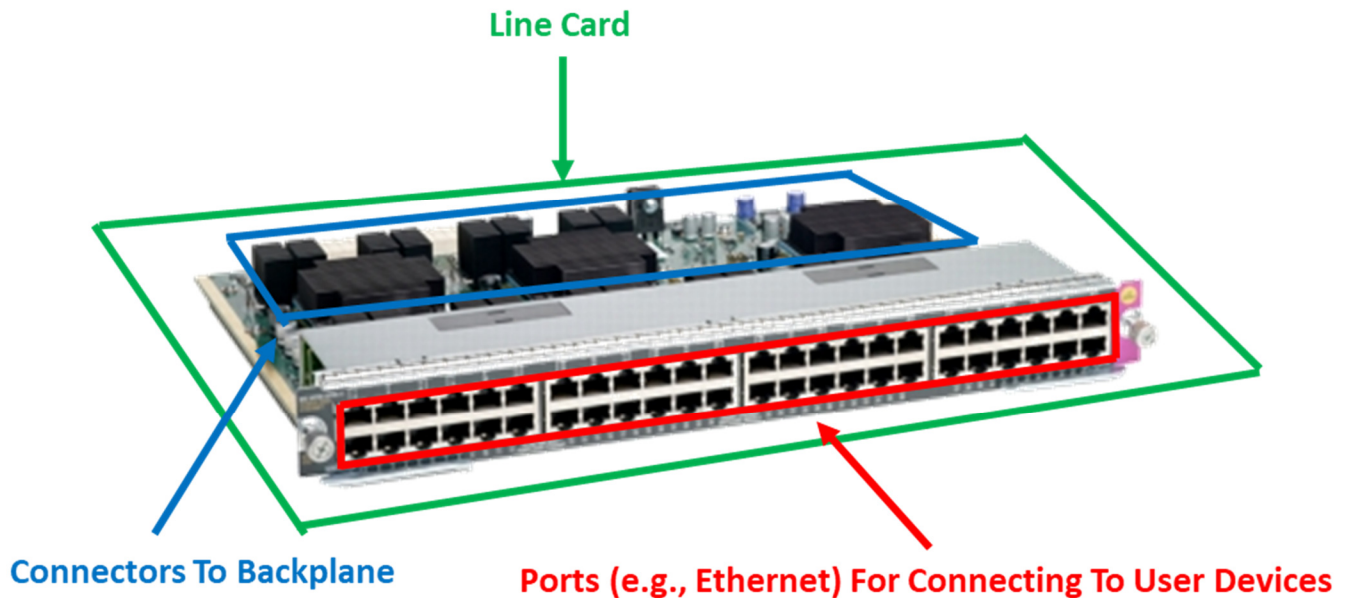
Figure 1 of the '740 Patent (annotated below) schematically illustrates a communication system in accordance with one embodiment. Ex. 1001 ['740 Patent], 4:5-7:



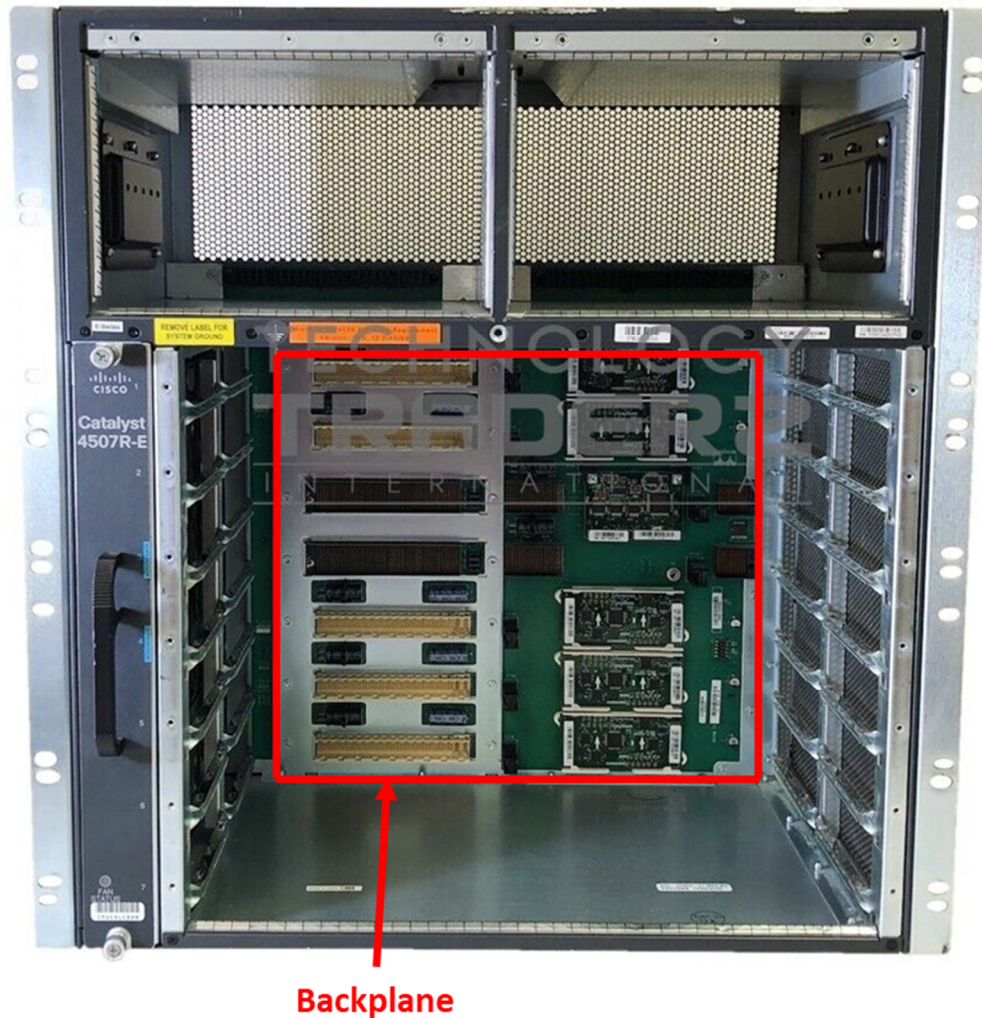
User ports 24 (e.g., the ports that connect to PCs or other user devices) are shown on the left. Each user port is connected to a line card 40. Ex. 1001 [’740 Patent], 4:29-30. Each line card 40 processes data frames from one or more user ports. *Id.* The line cards (also referred to as User Interface Modules or “UIMs”) are coupled to a backplane 52. Ex. 1001 [’740 Patent], 4:28-33. “Backplane 52 comprises physical links, such as backplane traces 56, typically in the form of printed circuit board (PCB) conductors.” Ex. 1001 [’740 Patent], 4:34-36. These traces are connected to the line cards 40, which connect to user ports. Thus, the line cards 40 (or User Interface Modules) are each connected to one group of user ports 24 and to a second group of backplane traces 56 and serve to connect one port out of the first

group of user ports 24 to one backplane trace out of the group of backplane traces 56 connected to the line card.

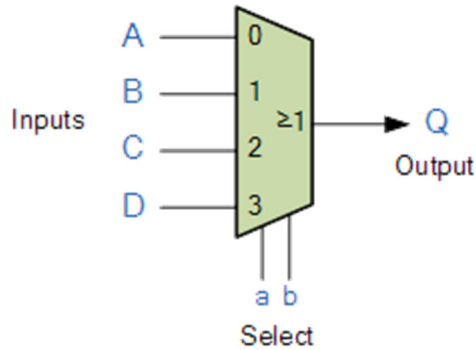
For reference, a real-world example of a line card is shown below with some of the elements discussed in the '740 Patent highlighted:



A similar example of a switch chassis containing a backplane (where the line cards connect) is shown below. Multiple line cards can be plugged into the backplane:



In the '740 Patent, the backplane 52 may be connected to a multiplexer (MUX) 44. Ex. 1001 ['740 Patent], 4:38. Multiplexers receive data through a number of inputs and combine those inputs onto a single output, as seen in the example multiplexer schematic below:

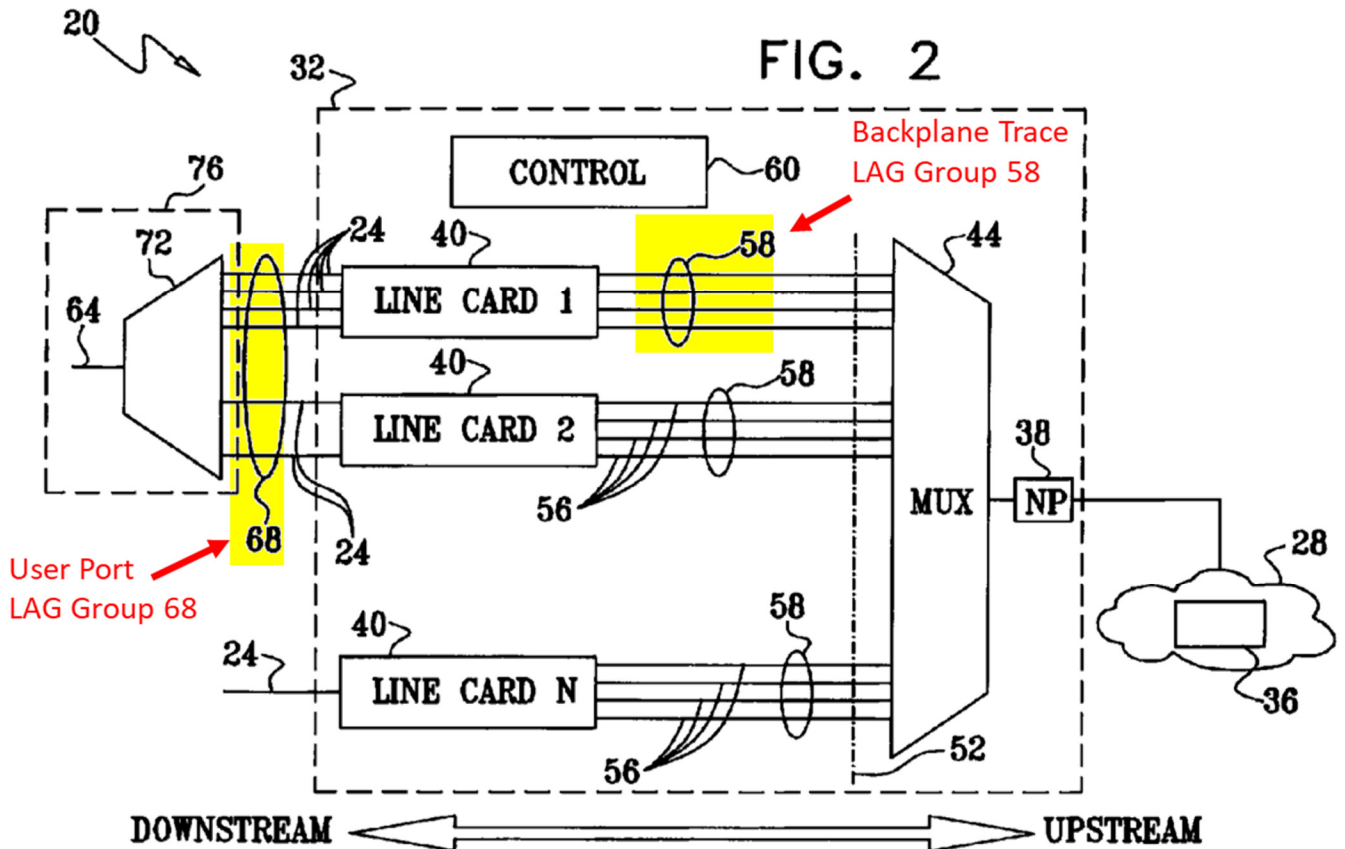


In some embodiments of the invention claimed in the '740 Patent, in the upstream direction (i.e., from user ports 24 to communication network 28), the multiplexer combines the frames received separately from each backplane trace onto a single upstream output that is sent to network processor 38 and then further upstream to node 36 of communication network 28. Ex. 1001 ['740 Patent], 4:39-42. “In the downstream direction, network processor 38 of network element 32 accepts a downstream input comprising downstream frames addressed to user ports 24 from node 36 through connection 48” and “MUX 44 sends each frame to the appropriate user port via the appropriate line-card.” Ex. 1001 ['740 Patent], 4:43-47.

In order to increase bandwidth and quality of service, the '740 Patent discloses link aggregation for both a first and second group of physical links. Ex. 1001 ['740 Patent], 2:47-49 (“In yet another embodiment, at least one of the first and second groups of physical links include an Ethernet link aggregation (LAG) group.”). These first and second LAG groups may comprise user ports and backplane traces, respectively. Ex. 1001 ['740 Patent], 2:5-8 (“In some embodiments, two or more

physical user ports are aggregated into a LAG group external to the network element, so as to form an aggregated user port having a higher bandwidth.”); 2:44-46 (“In another embodiment, the second physical links include backplane traces formed on a backplane to which the one or more interface modules are coupled.”). Further, the frames are distributed among different ports in a first group of ports and different backplane traces in a second group of backplane traces in order to balance the load, thereby increasing bandwidth and quality of service across the network. “The frames to and from the aggregated user port are distributed among the physical user ports of the external LAG group to balance the load and enable higher bandwidth and [quality of service].” Ex. 1001 [’740 Patent], 2:8-11.

An example of these two separate LAG groups is shown below with respect to annotated Fig. 2:



The '740 Patent discusses that “[i]n general, the processing of [] frames in network element 32 comprises two consecutive mapping operations.” Ex. 1001 [’740 Patent], 6:54-55. “First, each frame is mapped to one of user ports 24 in external LAG group 68.” Ex. 1001 [’740 Patent], 6:54-55. The user port 24 corresponds to a single line card, so “[d]etermining the user port implicitly determines through which line card 40 the frame will pass.” Ex. 1001 [’740 Patent], 6:57-58. “Then, the same frame is mapped to one of backplane traces 56 in the appropriate LAG group 58.” Ex. 1001 [’740 Patent], 6:58-60.

The '740 Patent teaches that the load-balancing operation can be performed

with suitable mapping functions, including, for example, hashing functions. Ex. 1001 [’740 Patent], 1:60-62, 5:22-24, 7:17-24. “The mapping function distributes the frames among the different backplane traces so as to balance the load between the traces.” Ex. 1001 [’740 Patent], 5:25-27. “[T]he mapping function hashes one or more frame attributes, such as header fields of the Ethernet frame, to produce a hashing key. The hashing key corresponds to an index of the backplane trace over which the frame is to be sent.” Ex. 1001 [’740 Patent], 5:27-31.

Examples of mapping functions are discussed in the specification, where, for example, mapping functions index both the user port and backplane trace onto four bits by using two bits for the port index and two bits for the trace index. Ex. 1001 [’740 Patent], 7:60-8:5 (“the four bit mapping index is partitioned so that two bits encode the user port and two bits encode the backplane trace.”). So, for example, in a LAG comprised of four ports and four backplane traces, each of the four ports is mapped to two bits and each of the four backplane traces is mapped to two bits.

The independent claims of the ’740 Patent require “selecting, in a single computation based on at least one of the frame attributes, a first physical link out of the first group and a second physical link out of the second group” to transmit each frame over. *See, e.g.*, Ex. 1001 [’740 Patent], claim 1. For example, for each frame being transmitted, the method selects not only a user port (first physical link) from a group of potential user ports, but also separately selects a backplane trace (second

physical link) as part of a single computation. The dependent claims require additional functionality such as multiplexing, load balancing, and the use of hashing and other mapping functions. *See, e.g., id.*, claims 6-11, 21-26.

D. Prosecution History

U.S. Pat. Appl. No. 11/279,045 was filed on April 7, 2006. Ex. 1002 [’740 File History], 205. The prosecution history is relevant to this POPR because Bruckman was disclosed and considered during prosecution.

Specifically, on January 19, 2009, the applicant filed a Supplemental Informational Disclosure Statement disclosing ten references including Bruckman. Ex. 1002 [’740 Patent File History], 55. Not only did the applicant disclose Bruckman, the applicant also expressly disclosed for the examiner’s consideration a December 11, 2008 Final Rejection that issued during the prosecution of applicant’s U.S. Patent Application Number 11/123,801. *Id.*, 54. This Office Action—which issued a little over a month before applicant disclosed Bruckman in the ’740 file history—discussed Bruckman in detail as the basis for a final rejection on similar claims in U.S. Pat. Appl. No. 11/123,801. Ex. 2001 [’801 Application Final Rejection]. Moreover, the ’801 Application office action was the first of only two office actions the IDS brought to the Examiner’s attention. Ex. 1002 [’740 Patent File History], 54. Thus, applicant promptly disclosed Bruckman and specifically drew the Examiner’s attention to Bruckman’s relevance in rejections covering

similar claims.

Given the timing and specificity of the disclosure, it is highly unlikely the Examiner overlooked Bruckman. More likely, the Examiner fully considered Bruckman but was not persuaded Bruckman alone or in combination with other prior art of record rendered the pending claims unpatentable.

On January 27, 2009, the Examiner initialed the IDS, indicating they had fully considered Bruckman, along with the other references disclosed in the IDS. *Id.*, 44. On February 2, 2009, the Examiner issued a notice of allowance. *Id.*, 38-40. The '045 Application issued as the '740 Patent on June 9, 2009. *Id.*, 32.

E. Petitioner's Cited References

The Petition asserts four grounds, as shown below:

Ground	'740 Patent Claims	Basis for Challenge
1	1-31	Obvious under § 103 based on U.S. Patent Publication No. 2004/0228278 ("Bruckman")
2	1-31	Obvious under § 103 based on Bruckman in view of U.S. Patent Publication No. 2003/0210688 ("Basso")
3	11 and 26	Obvious under § 103 based on Bruckman and Holdsworth
4	11 and 26	Obvious under § 103 based on Bruckman, Basso, and Holdsworth

Pet, 14. These references and grounds are identical to those in IPR2023-00401 and IPR2024-00026 (joined with IPR2023-00401):

Grounds	Claims	Basis
#1	1-31	35 U.S.C. § 103 (Pre-AIA) over Bruckman
#2	1-31	35 U.S.C. § 103 (Pre-AIA) over Bruckman and Basso
#3	11 and 26	35 U.S.C. § 103 (Pre-AIA) over Bruckman and Holdsworth
#4	11 and 26	35 U.S.C. § 103 (Pre-AIA) over Bruckman, Basso, and Holdsworth

IPR2023-00401, Paper 2, Pet., 21. *See also* IPR2024-00026, Pet., 2.

1. Bruckman (Ex. 1005)

Bruckman (Pat. Publ. No. US2004/0228278) is directed to “Bandwidth Allocation for Link Aggregation.” Ex. 1005 [Bruckman], Title.

2. Basso (Ex. 1006)

Basso (Pat. Pub. No. US2003/0210688) is directed to “logically grouping physical ports into logical interfaces to expand bandwidth.” Ex. 1006 [Basso], Title.

3. Holdsworth (Ex. 1007)

Holdsworth appears to be excerpted portions of the book “Digital Logic Design” by Brian Holdsworth and Clive Woods. Ex. 1007 [Holdsworth]. The excerpted portions comprise several single, non-sequential pages that purport to discuss multiplexers and decoders. *Id.*, 3-7.

III. THE BOARD SHOULD DENY INSTITUTION UNDER 35 U.S.C. §325(d)

35 U.S.C. §325(d) states that “[i]n determining whether to institute . . . the Director may take into account whether . . . the same or substantially the same prior

art or arguments previously were presented to the Office.” Thus, if the same or substantially the same prior art or arguments have previously been presented to the Board, the Board may exercise its discretion to deny institution. The Board has weighed the following non-exclusive factors in determining whether to exercise its discretion:

- (a) the similarities and material differences between the asserted art and the prior art involved during examination;
- (b) the cumulative nature of the asserted art and the prior art evaluated during examination;
- (c) the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection;
- (d) the extent of the overlap between the arguments made during examination and the manner in which Petitioner relies on the prior art or Patent Owner distinguishes the prior art;
- (e) whether Petitioner has pointed out sufficiently how the Examiner erred in its evaluation of the asserted prior art; and
- (f) the extent to which additional evidence and facts presented in the Petition warrant reconsideration of the prior art or arguments.

Becton, Dickinson v. B. Braun Melsungen, IPR2017- 01586, Paper 8 at 17-18 (PTAB

Dec. 15, 2017) (prec.).

A. Petitioner's Arguments

This Petition is nearly identical to the Petitions in IPR2023-00401 and IPR2024-00026. *Supra*, §§A, D. Instituting this Petition would require the Board to devote significant resources to entertain the *exact same arguments* that have already been made and evaluated in the -00401 and -00026 IPRs. Moreover, the ultimate outcome of not only the -000401 and -00026 IPRs, but also this IPR, will likely be dictated by the Federal Circuit's decision on appeal. Institution under these circumstances would be a complete waste of time and resources by the Board and parties.

Perhaps recognizing that this Petition should be denied under 35 U.S.C. §325(d), Petitioner devotes a section in the Petition to attempt to rebut PO's arguments. Pet., 85. But Petitioner's arguments reflect the weakness of its position. Petitioner does not address the controlling *Becton, Dickinson* decision or the factors discussed therein. *Id.* Instead, Petitioner raises unrelated and largely irrelevant arguments. For example, while Petitioner conclusorily alleges that "the Examiner erred by overlooking Bruckman's highly relevant teachings" (*id.*), the main issue here is not with prosecution (although Bruckman was considered during prosecution) but with the prior Cisco and Juniper IPRs that made the same arguments against the same claims using the same grounds and same prior art. *See Advanced*

Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH, IPR2019-01469, Paper 6 (PTAB Feb. 13, 2020) (“The proceedings in which the art was previously presented include, for example [] AIA post-grant proceedings involving the challenged patent.”).

Similarly, Petitioner argues that Arista is not an RPI or privy of Cisco or Juniper. *Id.* Even if true, that is irrelevant to a 325(d) analysis. Nothing in *Becton, Dickinson* or *Advanced Bionics* is conditioned on the relationship between the current Petitioner and prior matters. Indeed, institution is often denied under 325(d) solely on the basis of overlapping prior art considered during prosecution, when Petitioners are never involved. That is because the purpose of 325(d) is to protect the Office from wasting resources on issues it has already decided and to protect patent owners from defending their patents against serial attacks using the same prior art and same arguments.

Petitioner also cites *Blonder-Tongue*, but discretionary denial under 325(d) has nothing to do with collateral estoppel. The decision whether to institute an IPR under 325(d) is in the sole discretion of the Board and is based on consideration of the *Becton, Dickinson* factors described below. If institution is denied, Petitioner will not be collaterally estopped—it will still be able to fully “litigate the issue” of validity in an Article III district court.

Petitioner knew 325(d) was an issue when it filed the Petition and knew the

Becton, Dickinson factors govern application of 325(d). Petitioner chose not to address the relevant factors because none of the factors weighs in its favor. The Board should not permit Petitioner additional briefing to belatedly argue an issue it was fully aware of when it filed its Petition.

B. *Becton, Dickinson* Factors (a), (b) and (d)

Becton, Dickinson factors (a), (b) and (d) favor denying institution. Prior IPRs IPR2023-00401 and IPR2024-00026 present the same grounds with the same prior art advancing the same arguments. Further, the Bruckman reference was previously presented to the Office during prosecution. Thus, factors (a), (b) and (d) overwhelmingly favor discretionary denial.

Under factor (a), the prior art and arguments in this IPR were previously presented to the Board in IPR2023-00401 and IPR2024-00026. IPR2023-00401 and IPR2024-00026 asserted identical prior art in identical grounds against the same claims with nearly identical arguments. *Supra*, §II.E. Those IPRs resulted in a final written decision that is currently being appealed.

Moreover, Bruckman—the Petition’s primary reference for all grounds, was disclosed during prosecution in an information disclosure statement dated January 20, 2009. Ex. 1002 [‘740 File History], 55. On January 27, 2009, the examiner initialed the entry for Bruckman, indicating they had reviewed and considered Bruckman. *Id.*, 44 (initialing “SH” to indicate the reference was considered). On

February 2, 2009, the examiner issued a notice of allowance. *Id.*, 41.

In addition, Bruckman was discussed at length in a rejection of another of the applicant's co-pending applications, and the examiner considered that rejection (along with Bruckman) during prosecution. Ex. 1002 ['740 File History], 54-55; Ex. 2001 ['801 Application Final Rejection].

This IPR represents at least the *fourth time* Bruckman has been in front of the Office and the *third IPR* where Basso and Holdsworth have been considered in conjunction with Bruckman using identical grounds challenging identical claims. Factor (a) therefore strongly favors denying institution.

Factor (b) is the cumulative nature of the asserted art and the prior art evaluated during examination. The references here are completely duplicative of the references considered in IPR2023-00401 and IPR2024-00026. *Supra*, §II.E. Moreover, the Petition relies almost entirely on Bruckman, which was reviewed and considered by the examiner during prosecution in addition to being the primary reference in both prior IPRs against the '740 Patent. Accordingly, Factor (b) overwhelmingly favors denying institution.

Factor (d) is the extent of the overlap between the arguments made during examination and the manner in which Petitioner relies on the prior art or Patent Owner distinguishes the prior art. This IPR largely copies the merits arguments from IPR2023-00401. *Supra*, §II.A, E. Thus, the arguments advanced in this IPR are

almost identical to the arguments advanced in IPR2023-00401 and IPR2024-00026.

Further, the Bruckman reference used as the primary reference for each ground was considered by the Examiner with respect to the same claims challenged in the Petition. The examiner not only reviewed and considered Bruckman, the examiner also reviewed a rejection over Bruckman over similar claims in one of applicant's co-pending applications. In the January 19, 2009 supplemental information disclosure statement identifying Bruckman along with several other references, Applicant also identified a December 11, 2008 Non-Final Rejection from prosecution of Applicant's co-pending U.S. Patent Application Number 11/123,801 (the '801 Application). Ex. 1002 ['740 Patent File History], 54. *See* Ex. 2001 ['801 Application Non-Final Rejection]. While the '801 Application is not directly related to the '740 Patent, its then-pending claims were similar to certain claims of the '740 Patent in that they claimed selecting ports from a link aggregation group. For example, then-pending claim 1 of the '801 Application read as follows:

1. (Currently amended) A method for processing data packets in a communication network, comprising:

establishing a path for a flow of the data packets through the communication network;

at a node along the path, which is connected to a subsequent node along the path by a Link Aggregation (LAG) group comprising having a plurality of aggregated physical ports, selecting a port from ~~among~~ the ~~plurality~~ LAG group to serve as part of the path;

choosing a label responsively to the selected port;

attaching the label to the data packets in the flow at a point on the path upstream from the node; and

upon receiving the data packets at the node, switching the data packets to the subsequent node through the selected port responsively to the label.

Ex. 2002 [’801 Application Pending Claims], 1.

This claim is similar to the ’740 Patent claims, except it had only a single “selection” of a port out of a LAG group, instead of two selections (of both a first physical link (e.g., a port out of a first LAG group) and a second physical link (e.g., a backplane trace out of a second LAG group)) as required by claim 1 of the ’740 Patent. Given that Bruckman does not select a second physical link as required by the claims, it is not surprising the examiner discussed it during prosecution of the ’801 Application but not during prosecution of the ’740 Patent.

Thus, this factor overwhelmingly favors discretionary denial.

C. *Becton, Dickinson* Factors (c), (e) and (f)

Becton, Dickinson factors (c), (e) and (f) each favor noninstitution.

Factor (c) is the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection. Here, the

prior art was evaluated extensively during IPR2023-00401, resulting in a final written decision on appeal invalidating the challenged claims over Bruckman. Indeed, the Board even extended the pendency of IPR2023-00401 past the statutory year deadline in order to consider the asserted art in IPR2023-00401. IPR2023-00401, Paper 38. And, as discussed above, Bruckman was considered by examiner and was the basis for rejecting similar claims in the '801 Application. Accordingly, this factor favors denying institution.

Factor (e) is whether Petitioner has pointed out sufficiently how the examiner erred in its evaluation of the asserted prior art. Petitioner presumably will not allege the Board erred in the final written decision for IPR2023-00401 finding the challenged claims unpatentable over Bruckman. With respect to prosecution, Petitioner provides the generic argument that the examiner erred in considering Bruckman “because the overlooked teachings of Bruckman render obvious the limitations that the Applicant had added to gain allowance.” Pet., 85. But such unsupported *ipse dixit* arguments are entitled to little weight, especially since the '401 IPR final written decision fully considered Bruckman, Basso and Holdsworth. Accordingly, this factor strongly favors discretionary denial.

Factor (f) is the extent to which additional evidence and facts presented in the Petition warrant reconsideration of the prior art or arguments. As discussed above at §II.A, this IPR is nearly identical to the -00401 and -00026 IPRs. Petitioner identifies

(and PO is aware of) no additional evidence or facts in this IPR that was not already addressed in the -00401 and -00026 IPRs. Accordingly, factor (f) favors denying institution.

Each *Becton, Dickinson* factor favors denying institution. The Board should therefore deny institution pursuant to 35 U.S.C. §325(d).

IV. CONCLUSION

For the foregoing reasons, the Board should decline to institute this IPR under 35 U.S.C. §325(d).

Date: December 27, 2024

Respectfully submitted,

/ Stephen P. McBride /

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITS

This Patent Owner's Preliminary Response ("POPR") consists of 4,139 words, excluding table of contents, table of authorities, certificate of service, this certificate, or table of exhibits. The POPR complies with the type-volume limitation of 14,000 words as mandated in 37 C.F.R. § 42.24. In preparing this certificate, counsel has relied on the word count of the word-processing system used to prepare the paper (Microsoft Word).

Dated: December 27, 2024

/Stephen P. McBride/
Stephen P. McBride
Reg. No. 78,396

Counsel for Patent Owner

CERTIFICATE OF SERVICE

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

**PATENT OWNER'S PRELIMINARY RESPONSE
EXHIBITS 2001-2003**

The names and email addresses of the parties being served are as follows:

Eliot D. Williams	Eliot.williams@bakerbotts.com
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Respectfully submitted,

/Stephen P. McBride/

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