

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner

v.

WSOU INVESTMENTS d/b/a BRAZOS LICENSING AND DEVELOPMENT,
Patent Owner.

IPR2025-00188
U.S. Patent No. 8,982,691

PETITIONER'S BRIEF AGAINST DISCRETIONARY DENIAL

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PETITIONER'S EXHIBIT LIST

Ex.1001	U.S. Patent No. 8,982,691
Ex.1002	Prosecution History of U.S. Patent No. 8,982,691.
Ex.1003	Declaration of Dr. Henry Houh under 37 C.F.R. § 1.68.
Ex.1004	<i>Curriculum Vitae</i> of Dr. Henry Houh.
Ex.1005	U.S. Patent Pub. No. 2004/0218525, (“EDC_525”).
Ex.1006	U.S. Patent Pub. No. 2004/0246892, (“EDC_892”).
Ex.1007	Provisional Application 60,328,087.
Ex.1008	U.S. Patent No. 8,913,481.
Ex.1009	“Dynamic Path Management with Resilience Constraints under Multiple Link Failures in MPLS/GMPLS Networks,” Park et al, IEEE 2008.
Ex.1010	“Optimal and Guaranteed Alternative LSP for Multiple Failures,” Hundessa et al., IEEE 2004.
Ex.1011	U.S. Patent No. 7,835,267.
Ex.1012	U.S. Patent No. 9,559,947.
Ex.1013	U.S. Patent Pub. No. 2009/0292943, (“Hanif”).
Ex.1014	Microsoft Computer Dictionary, (1999).
Ex.1015	U.S. Patent No. 7,821,951.
Ex.1016	C++ Inside and Out, Eckel (1993).
Ex.1017	Programming Microcontrollers in C, (Sickle) 1994.
Ex.1018	RFC3945.
Ex.1019	RFC4090.
Ex.1020	U.S. Patent No. 7,672,226.
Ex.1021	U.S. Patent No. 7,626,925.
Ex.1022	Traffic Engineering with MPLS, Osborne (2003).
Ex.1023	Fault-Tolerant IP and MPLS Networks, Hussain (2004).

Ex.1024	U.S. Patent Pub. No. 2009/0219806A1.
Ex.1025	U.S. Patent Pub. No. 2006/0159009A1.
Ex.1026	MPLS Traffic Engineering Path Link and Node Protection Configuration Guide, Cisco Press, 2011.
Ex.1027	Protection Performance Components in MPLS Networks, Calle (2004).
Ex.1028	U.S. Patent No. 7,616,637.
Ex.1029	RFC3031.
Ex.1030	Certified English Translation of CN101645848A.
Ex.1031	CN101645848A.
Ex.1032	Websters New World Dictionary of Computer Terms (2000)
Ex.1033	Computer Desktop Encyclopedia (2001)
Ex.1034	The C language interface to the SQLite library
Ex.1035	University of Hawaii, EE160 Book, Chapter 9, Two Dimensional Arrays
Ex.1036	Functional C (1999)
Ex.1037	UT Austin Lecture_2010
Ex.1038	A Complete Guide to C++
Ex.1039	Introduction to Pro_C
Ex.1040	Complaint - <i>WSOU Investments, LLC v. Cisco Systems, Inc.</i> EDTX-2-24-cv-00332.
Ex.1041	Federal Court Trial Statistics – June 30, 2024.
Ex.1042	Docket Control Order - <i>WSOU Investments, LLC v. Cisco Systems, Inc.</i> , No. 2-24-cv-00332, (E.D. Tex. August 5, 2024).
Ex.1043 (NEW)	Cisco Network Convergence System 4200 Series, <i>available at</i> : https://www.cisco.com/c/en/us/support/optical-networking/network-convergence-system-4200-series/series.html
Ex.1044 (NEW)	USPTO Assignment Record for U.S. Patent No. 8,982,691
Ex.1045 (NEW)	Docket Navigator Cases Involving U.S. Patent No. 8,982,691
Ex.1046 (NEW)	Britannica Money, Cisco Systems, <i>available at</i> : https://www.britannica.com/money/Cisco-Systems-Inc

Ex.1047 (NEW)	Statista, Cisco Systems, Number of Employees
Ex.1048 (NEW)	Cisco, Federal Government IT Solutions, <i>available at</i> : https://www.cisco.com/c/en/us/solutions/industries/government/federal-government-solutions.html#~get-started
Ex.1049	Reserved
Ex.1050 (NEW)	USPTO Patent Trial and Appeal Board, Boardside Chat: AIA Discovery Practice (Sept. 19, 2024)

I. INTRODUCTION

A. Petitioner's Sotera Stipulation Favors Institution

Cisco's *Sotera* stipulation (Paper 7) significantly reduces duplicative efforts. First, Patent Owner (PO) contends that, regardless of institution, Cisco will remain free to assert any prior art ground that was not presented to the Board "even if Petitioner could reasonably have done so." Paper 8 at 3. Not so. Cisco's stipulation is clear: if the PTAB institutes an IPR trial, Cisco "***will not pursue*** in the co-pending district court litigation...the specific grounds asserted [here], or ***any other ground that could have been reasonably raised***" against the Challenged Claims. This is a direct contradiction to PO's argument that the *Sotera* stipulation is not proper.

Second, PO claims that Cisco retained the right to assert prior art "based on products or systems in combination with prior art that it has raised or could have raised before the Board." Paper 8 at 3. As an initial matter, a ground that is based on system art, whether combined with other art, cannot be raised at the PTAB in an IPR. *See* 35 U.S.C. §311(b). Moreover, trial in the district court has not yet happened and it is improper to speculate how Cisco ***might*** challenge the validity of the '691 patent at trial. *See Dell Inc., et al. v. Universal Connectivity Technologies Inc.*, IPR2024-01479, Paper 11 at 7-8 (Apr. 7, 2025) ("Although we acknowledge Patent Owner's concern about lack of overlap stemming from Petitioner's

reservation of rights in its Sotera stipulation, our evaluation at this juncture is based on the facts before us, not on how Petitioner *might* challenge the validity of the patent at trial.”) (denying institution on other grounds).

Cisco's stipulation weighs heavily against discretionary denial.

B. There are no Settled Expectations of the Parties

There is no credible evidence to establish a “settled” expectation of the parties that the '691 patent is valid and/or infringed. Cisco certainly had no settled expectation regarding the '691 patent which is why Cisco is actively disputing all of PO's allegations in the district court. In fact, PO concedes that Cisco is prepared to show how Cisco's *own product*—Cisco IOS 12.1 and/or 12.2 running on Cisco platforms—invalidates the '691 patent. Paper 8 at 4. And, according to PO, Cisco already had at least one patent of its own “in a relevant technology area” at least because Cisco's patent was cited during prosecution of the '691 patent. Paper 8 at 9. Cisco was thus actively innovating on its own. Moreover, Cisco's accused product in the district court—the Cisco Network Convergence System 4200 Series (Ex.1040, ¶158)—was released on or around December 8, 2015. Ex.1043. PO took ownership of the '691 patent around *1.5 years later* on July 22, 2017, yet PO waited an additional *7 years*—until May 6, 2024—to accuse Cisco of infringing the '691 patent. Ex.1044; Ex.1040.

PO also has no credible basis to suggest that it has a “settled” expectation. On the contrary, the ’691 patent issued on March 17, 2015. Ex.1001, Cover. Since then, the ’691 patent has only been asserted once, against Cisco. Ex.1045. At best, PO suggests that it has licensed the portfolio that contains some patents, but this statement is not connected to the ’691 patent.¹ PO’s suggestion that a Cisco patent being cited during prosecution of the ’691 patent put Cisco on “notice” is similarly disconnected from whether the patent is valid and/or enforceable. Paper 8 at 9. Like Alcatel-Lucent, the predecessor in interest of the ’691 patent, PO admits that Cisco had its own innovation in “a relevant technology area.” Paper 8 at 9. And, as a policy matter, it is highly unreasonable to require Cisco to perform a “freedom to operate” analysis on each newly issued, remotely relevant patent—as PO suggests, Paper 8 at 8-9—and then attempt to penalize Cisco for not challenging each such patent in a post-grant review.

This additional consideration weighs against discretionary denial.

¹ PO cites to Ex.2020 about its licensing activities, but the statement is referring to a “’216 patent”; not the ’691 patent at issue here. Paper 8 at 12.

C. Compelling Economic and National Security Interests Favor Institution

Cisco is an American company headquartered in San Jose, California, that prides itself on its dedication to innovation. The company grew from a small business, founded by two Stanford University computer scientists in 1984, to a company that invests extensively in the US economy by employing over 43,000 US-based employees today. Ex.1046; Ex.1047. Cisco is also involved in the efficient operation of the US government and has multiple solutions for the Federal government and the Department of Defense. Ex.1048. Maintaining and encouraging cost-effective resolution of patent disputes at the PTAB by expert administrative patent judges is in the US economy's interest.

Cisco has compelling economic and national security interests to resolve patent disputes *in a cost-effective manner* before the PTAB.

PO, on the other hand, is a non-practicing entity; it does not contribute to US innovation on its own. Rather, PO acquires patents from others and licenses or litigates those patents against US entities. Paper 8 at 12. Nor does PO further innovation by those that sold PO its patents, at least because PO does not contend that it has any profit sharing or co-development agreement with patent sellers.

PO attempts to obscure these facts by talking about a portfolio of “around 8,500” patents that PO acquired and is now asserting. Paper 8 at 11. The proffered

deposition testimony, however, is not about the '691 patent, does not suggest that PO was motivated to purchase the portfolio (or to pay the price that it did) because of the '691 patent. At best, as discussed above, PO suggests that it has licensed some patents, but again, these activities are not allegedly connected to the '691 patent itself. *See, supra*, FN1.

Moreover, PO's purchase of a patent portfolio that includes the '691 patent does not establish a compelling economic interest. First, the original purported innovator(s) have already been paid by the predecessors in interest of the patents in the portfolio. Second, predecessors in interest that might have engaged in some measure of research and development have also been paid when PO purchased the portfolio. As PO does not innovate on its own, does not make any product, and merely earns revenue by licensing or suing innovating market participants, PO does not have a compelling economic interest sufficient to keep its patents out of a cost-effective PTAB review.

As a policy matter, PO is seeking injunctive relief in the district court. Ex.1040, ¶185. If the PTAB institutes an IPR trial and finds that the '691 patent is unpatentable, the practical implication is that PO improperly held a legal monopoly and sought injunctions, unnecessarily blocking actual innovation and economic activity of others in the US. It is therefore in the Nation's best interest to end such improper blocking monopolies. Otherwise, real innovators risk being dragged into

costly district court litigation or ITC investigations and potentially made to pay damages for allegedly infringing patents that should never have been issued. This fact—in and of itself—is a compelling economic interest urging review of the merits of Cisco's challenge of the '691 patent by the PTAB.

This additional consideration weighs against discretionary denial.

D. Petitioner's Expert Testimony Favors Institution

There is no defect in Petitioner's declaration, contrary to PO's suggestion. Petitioner's expert—Dr. Houh—prepared a 150-page declaration of his opinions regarding the unpatentability of the '691 patent and PO complains about *19 of the 251 paragraphs* in the declaration. These paragraphs relate to the following:

- (a) Summary of the prior art (¶¶70-71, 73-74, 79-80);
- (b) Reasons to combine the asserted prior art (¶¶86, 94-95, 228-229, 237, 239); and
- (c) Portion of the analysis of claim 1's preamble (¶¶112-117).

Paper 8 at 7-8.

This is a far cry from *Xerox Corp. v. Bytemark, Inc.* that PO cites. There, the only evidence to support Petitioner's argument was the opinion of its expert who merely repeated a one sentence conclusory assertion in the Petition. IPR2022-00624, Paper 9 at 15 (Aug. 24, 2022). The PTAB noted that the expert did “not cite to any additional supporting evidence or provide any technical reasoning to support

his statement.” *Id.* This was particularly problematic, according to the PTAB, where the expert’s testimony was offered “to supply a limitation missing from the prior art.” *Id.* at 16.

Here, in contrast, the paragraphs PO complains about in Dr. Houh’s expert declaration (Ex.1003) related to summaries of the prior art and motivation to combine are replete with citations to the record evidence and are ***only a subset*** of Dr. Houh’s analysis. For example, Dr. Houh’s summary of the prior art (a) spans paragraphs 68-85 and 223-226. PO complains about a handful of these paragraphs. Similarly, Dr. Houh’s motivation to combine analysis (b) spans paragraphs 86-103 and 227-237. Again, PO complains about just a few of these paragraphs. PO also omits from its brief that Dr. Houh’s analysis of claim 1’s preamble (c) includes ***additional*** paragraphs 104-111 providing further analysis and evidence. None of the challenged paragraphs seek to substitute Dr. Houh’s unsupported say-so for a limitation missing from the prior art, as in *Xerox*. The extent of Dr. Houh’s analysis and evidence he marshals to support his analysis favors institution.

This additional consideration weighs against discretionary denial.

E. Strength of Petitioner’s Challenge Favors Institution

Cisco presents two strong independent Grounds for obviousness challenge of the ’691 patent claims 1-10. PO suggests that the operating protective order in the district court might interfere with PO being able to present evidence of some

unidentified secondary considerations of non-obviousness. Paper 8 at 5-6. First, PO ignores that the PTAB has procedures for obtaining evidence pertaining to, for example, secondary considerations. 35 U.S.C. §316(a)(5); 37 C.F.R. §42.51(b)(2). Of course, PO might not want to engage in the PTAB's additional discovery process because it would have to tailor its discovery requests rather than engage in a fishing expedition. Ex.1050 at 23. Second, PO has not identified any instance where Cisco had denied PO using documents from the district court in the PTAB nor any requests to do so. PO's argument here is entirely speculative. Cisco's multiple independent Grounds that challenge all 10 claims of the '691 patent, are strong and should be considered on the merits.

This additional consideration weighs against discretionary denial.

II. CONCLUSION

The Board should decline to exercise its discretion to deny institution.

Respectfully submitted,

Dated: April 22, 2025
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CERTIFICATE OF WORD COUNT

Pursuant to the Board's March 31, 2025, authorization to file additional briefing, Petitioner hereby certifies, in accordance with and in reliance on the word count provided by the word-processing system used to prepare this Petition, that the number of words in this paper is 1,737, which is less than or equal to the 2,318 words allowed.

Dated: April 22, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. § 42.6(e),
service was made on Patent Owner as detailed below.

Date of service April 22, 2025

Manner of service Electronic Mail to: david.schumann@foliolaw.com;
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Documents served **Petitioner's Brief Against Discretionary Denial;
Petitioner's Exhibit List; and Exhibits Ex.1043 –
Ex.1048 and Ex.1050.**

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