

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.
Petitioner,

v.

QUICKER CONNECTIONS LLC,
Patent Owner

IPR2025-01088
U.S. Patent No. 7,061,859

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
REQUEST FOR DISCRETIONARY DENIAL**

I. This IPR is a good use of the Board's resources.

Petitioner Cisco Systems, Inc. ("Cisco") respectfully seeks PTAB review of the '859 patent for the following reasons.

Patent Owner's extensive delay in asserting the '859 patent nearly two decades after issuance outweighs any settled expectations that Patent Owner claims. The '859 patent was filed in 2001 and issued in 2006. And only after the '859 patent expired in 2023 did Patent Owner decide to assert it against Cisco in late 2024. Several other patents from the Orckit patent portfolio, to which the '859 patent belonged, have been asserted against Cisco over the past decade. But at no point during this litigation campaign was Cisco accused of infringing the '859 patent. As such, Cisco did not expect enforcement of the '859 patent.

Moreover, this IPR allows the Office to correct its error in allowing the '859 patent to issue. The Examiner put very little effort into searching for prior art—entering very few search queries. Had the Examiner complied with the MPEP guidelines and performed a more thorough search, he may have identified relevant prior art that shows that the concepts recited in the '859 patent's claims had already been publicly disclosed.

Furthermore, with seven cases for trial scheduled the same day, the trial date is likely to slip past the date of final written decision. For these reasons, and those identified below, this case should be referred to a merits panel.

II. Patent Owner's extensive delay in asserting the '859 patent outweighs any settled expectations that Patent Owner now claims.

The Patent Owner (and its predecessors in interest) waited nearly two decades after the '859 patent issued, and more than one year after it expired, before asserting it against anyone. While the '859 patent was one of the many patents in the marketed Orckit patent portfolio during its lifetime, at no point did the Patent Owner file a complaint asserting that anyone's products infringed the patent. While many patents from the Orckit patent portfolio have been asserted against Cisco over the last decade, it was not until recently that Patent Owner decided to assert the '859 patent. Patent Owner's extensive and unexplained delay should not shield the '859 patent from *inter partes* review.

Patent Owner's delay in asserting the '859 patent until after it expired created settled expectations for Petitioner that the '859 patent would not be enforced. *See Google LLC v. Sandpiper CDN, LLC*, IPR2025-00806, Paper 13, 2-3 & n.3 (Director Delegate Sept. 12, 2025) ("discretionary denial is not appropriate" where patents expired before their assertion, and thus petitioner "expected non-enforcement of the challenged patents"); *Globus Med., Inc. v. Spinelogik, Inc.*, IPR2025-00226, Paper 8 at 2 (Director June 12, 2025) ("[T]he challenged patent expired almost four years ago due to non-payment of maintenance fees, and, accordingly, [Petitioner] expected nonenforcement of the challenged patent.... [D]iscretionary denial is not appropriate.").

The '859 patent was never asserted during its lifetime. It was filed on August 30, 2001, and issued on June 13, 2006. After being in force for almost two decades, it expired on October 5, 2023. More than a year after expiration, on December 24, 2024, Patent Owner filed a complaint asserting the '859 patent against Cisco. Patent Owner's delay until after expiration favors referral. *See Apple Inc. v. Ferid Allani*, IPR2025-00856, Paper 11, 3 ("Patent Owner did not assert the challenged patents against Petitioner until after they expired. Under these circumstances, discretionary denial is not appropriate.")

The Patent Owner had ample opportunity to assert the '859 patent during its lifetime but chose not to. The entire Orckit patent portfolio, which included the '859 patent, was marketed to the public in March of 2011. Ex.1011. Indeed, the marketing materials shown in Ex.1011 were provided directly to Cisco. But at no point did Orckit ever assert or allege that Cisco's products infringed the '859 patent. And Cisco had no reason to challenge the patents being offered for sale because at the time, none of them had been asserted against Cisco.

Now, after 13 years of silence regarding the '859 patent since the initial offering, Patent Owner has decided to assert the '859 patent. This extensive delay since the initial public offering in 2011 also favors referral. *See Apple v. Ferid Allani*, IPR2025-00856, Paper 11, 3 (referring an IPR of a 13-year-old patent "because Patent Owner did not assert the challenged patent against Petitioner until

eleven years after the parties' discussion about that patent").

As Patent Owner notes, several patents from the Orckit patent portfolio have been litigated against Cisco. Paper 9, 9. But Patent Owner identifies no instance where Cisco was notified by Patent Owner (or its predecessors in interest) of a belief that Cisco's products infringe the '859 patent prior to filing the complaint in this case. Cisco thus did not expect enforcement of the '859 patent.

Patent Owner's long delay in asserting the '859 patent, along with its previous actions with respect to its patent portfolio, outweigh any settled expectations and any concerns that a district court trial could occur before this proceeding reaches a final written decision. *See Apple v. Ferid Allani*, IPR2025-00856, Paper 11, 2-3 (referring case to a merits panel despite "meaningful investment in the district court proceeding" and a projected five-month gap between district court trial and final written decision). Accordingly, Petitioner respectfully requests that this case be referred to a merits panel for consideration.

III. The Examiner did not meet the MPEP's guidelines for conducting a "thorough and complete search of the prior art."

The MPEP states that Examiners "must conduct a thorough and complete search of the prior art. A search is considered thorough when all areas with the highest probability of finding prior art relevant to the invention as it is claimed and described in the specification are identified for search." MPEP 904.02. But the prosecution record does not indicate that such a thorough search was made. *See*

generally, Ex.1002. To the contrary, the Examiner's search strategy shows that he made a mere eight queries total. Ex.1002, 139-41. The Examiner's meager efforts fall short of the MPEP's requirement. Had the Examiner performed a more thorough search, he may have found the Omichi reference (Ex.1005) which describes the exact same techniques claimed in the '859 patent. The Examiner's inadequate effort further undermines any settled expectations of the Patent Owner and warrants PTAB review.

The Examiner does not appear to have done much searching before the first Office Action, as there is no record of any search queries before then. Ex.1002, 1-107. In the first Office Action, the Examiner rejected the claims using a reference that was listed in an IDS submitted with the application. Ex.1002, 79, 82.

The only search queries in the record were performed after the Applicant amended the claims responsive to that first Office Action. Ex.1002, 143-41. However, the search notes show that a very small effort was made. There are only eight queries in total. The entirety of the Examiner's search efforts is shown below.

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Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	30	((mask near3 bit) with (fault or failure or disrupt\$5 or interrupt\$5 or broken or protection)) same (network)	US-PGPUB; USPAT; USOCR; EPO; DERWENT	OR	ON	2005/11/17 15:37
L2	15	((mask near3 bit) with (fault or failure or disrupt\$5 or interrupt\$5 or broken or protection))[bsum] and (network)[bsum]	US-PGPUB; USPAT; USOCR; EPO; DERWENT	OR	ON	2005/11/17 15:40
L3	9	((mask near3 bit) with (fault or failure or disrupt\$5 or interrupt\$5 or broken or protection))[bsum] and (path)[bsum]	US-PGPUB; USPAT; USOCR; EPO; DERWENT	OR	ON	2005/11/17 15:40
L4	23	((mask near3 bit) with (fault or failure or disrupt\$5 or interrupt\$5 or broken or protection))[bsum] and (channel)[bsum]	US-PGPUB; USPAT; USOCR; EPO; DERWENT	OR	ON	2005/11/17 15:41
L5	12	((mask near3 bit) with (fault or failure or disrupt\$5 or interrupt\$5 or broken or protection))[bsum] and (link)[bsum]	US-PGPUB; USPAT; USOCR; EPO; DERWENT	OR	ON	2005/11/17 16:32
L6	3542	(370/216,217,218,221,222,223,224, 241,250,408,424,527,528,529).CCLS.	US-PGPUB; USPAT	OR	OFF	2005/11/17 16:34

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	789	(370/225,227,228).CCLS.	US-PGPUB; USPAT	OR	OFF	2005/11/18 10:08

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	0	((((mask near3 bit) with (fault or failure or disrupt\$5 or interrupt\$5 or broken or protection)) same (superimpos\$5 or insert\$5)))[clm]	US-PGPUB	OR	ON	2005/11/18 10:47

Ex.1002, 139-41.

These few queries—six of them nearly identical—are not sufficient to determine whether the Applicant was truly entitled to a patent. This is the type of

scenario contemplated by Congress when they said that “questionable patents are too easily obtained.” H.R. Rep. No. 112-98, at 39-40 (2011). This proceeding thus allows the Office to address the Examiner’s shortcomings by considering the new evidence identified in the Petition.

The Examiner’s meager search efforts, combined with Patent Owner’s delay, outweigh any settled expectations. “[N]o patent holder has a right to an invalid patent, however long that patent holder may have enjoyed that right inappropriately.” S. Rep. No. 110-259, at 21 (2008) (emphasis added). The length of time that the ’859 patent was in force should not shield the ’859 patent from review, particularly where the Examiner made little effort to search for prior art. Accordingly, this case should be referred to a merits panel.

IV. The AIA does not shield patents that were granted in error from review.

The AIA was designed for these types of situations—where prosecution failed to identify the relevant prior art and a patent was erroneously granted. And regardless of the time a patent has been in force, it is bedrock statutory patent law that one is not entitled to a patent if the invention was “described in a **printed publication in** this or **a foreign country**, before the invention thereof by the applicant for a patent.” 35 U.S.C. § 102(a) (pre-AIA). That is precisely the case here—the purported invention of the ’859 patent had already been described in a printed publication in a foreign country.

As demonstrated in the Petition, Omichi teaches the same concepts that are claimed in the '859 patent. The '859 patent relates to fault protection in a ring network having a plurality of nodes connected through network segments.

Ex.1001, 3:52-55. The '859 patent describes using a first set of bits (a “general mask”) to represent which network segments are operational. *See* Ex.1001, 2:19-30. Additionally, a second set of bits (a “specific mask”) is used to represent a particular path through the ring network. To determine if data for that path should be rerouted in the opposite direction, the first set of bits is compared with the second set of bits using a Boolean AND operation. Ex.1001, 4:64-5:5. This comparison process is recited in the claim as “superimposing.” Ex.1001, claim 1.

Omichi describes the same concept. Omichi describes using a first set of bits (a “ring link failure table”) to represent which network segments are operational or have failed. Ex.1005, [0036]. Additionally, a second set of bits (a “used ring link table”) is used to represent the flow of data through the ring network. Ex.1005, [0037]. Omichi then describes comparing the two tables to determine whether traffic should be rerouted in an opposite direction through the ring network. Ex.1005, [0041]. While Omichi uses different words to describe the claimed concepts (e.g., referring to a set of bits as a “table” rather than a “mask”), Dr. Min confirms the perspective of a POSITA that Omichi teaches the same thing as claimed. Patentees need to claim their innovations, not innovate their claim

language.

Again, this IPR allows the Office to correct the mistake in allowing the '859 patent to grant. Petitioner thus requests that this case be referred to a merits panel.

V. National economic and security interests favor institution.

It is a good use of PTAB resources to review a questionably granted patent, particularly where that patent is being asserted against products that are key to national security infrastructure. Cisco is a key supplier of critical networking infrastructure for government agencies and the military. Cisco also provides significant support to the nation's network security and artificial intelligence endeavors. Resolving the patentability of the '859 patent *in an efficient and cost-effective manner* before the PTAB also frees up more of Cisco's resources to be spent on critical national security and economic interests.

Cisco plays a multifaceted role in supporting the federal government and the U.S. economy at large. 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 U.S. economy by employing over 43,000 US-based employees today. Ex.1013. Cisco supports many more indirectly through its supply chain, partners, and service providers. It invests in

workforce development through initiatives like the Cisco Networking Academy, which has trained millions globally, including a large U.S. cohort. Ex.1014.

Cisco provides support for the military and the public sector more broadly. Cisco provides network equipment to all four branches of the military through Cisco "Gold Partners." Ex.1015. Cisco's technology is also used heavily by the public sector more generally. *See* Ex.1016. Using Cisco's products, "public sector agencies now have new ways to safeguard sensitive data, critical infrastructure, and constituent services." Ex.1016.

Cisco is also a key supplier to the private sector. Cisco's priorities are "i) to build modern infrastructure; ii) to protect against the cyber threats of today and tomorrow; and iii) to harness the power of AI and data ." Ex.1013, 3. Cisco's products allow their customer to scale their "network infrastructure with high-density routers and switches, improved network management, and high-performance optics" and provides value to their private sector and government customers "by simplifying the configuration, monitoring, and maintenance of fabrics, compute, networking and storage." Ex.1013, 4.

Given Cisco's significant contribution to the economy and national security, the U.S. government has compelling economic and national security interests in affording Petitioner Cisco the opportunity to challenge the '859 patent under the more efficient IPR framework. Indeed, Congress created the AIA for this purpose.

77 F. Reg. No. 157, 48612 (Aug. 14, 2012) (“The purpose of the AIA ... is to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs.”); *see also General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 16-17 (Sept. 6, 2017) (“[W]e recognize that an objective of the AIA is to provide an effective and efficient alternative to district court litigation.”).

Instituted AIA proceedings have resulted in Congress’ intended effect. IPRs create the cost savings for their participants via “reductions in legal fees incurred and the greater probability of a settlement or early-stage resolution.” Ex.1017, 2, 8 (“[T]he total economic benefits of inter partes reviews resulting in stay of litigation in district court included an increase in US business activity of \$1.87 billion in gross product and 8,530 job-years of employment ...”; “In situations where an inter partes review was conducted parallel to a district court proceeding, the economic benefits of [inter partes reviews] include estimated increases of \$135.4 million in US gross product and 617 person-years of employment”).

Accordingly, national and economic security interests favor institution.

VI. The Petition properly relies on expert testimony

Dr. Min’s testimony provides the proper role of confirming the perspective of a POSITA as of the time the ’859 patent was filed. Because the Petition, along with Dr. Min’s analysis, rely on the cited patent references for each and every

limitation of the claims, reliance on expert testimony should not be a reason for discretionary denial here. Dr. Min's opinions are fully supported by the evidence of record. Dr. Min bases his analysis on evidence in the form of the reference relied upon in the unpatentability grounds (e.g., Ex.1005) and several tertiary references (e.g., Ex.1006-1009). *See generally*, Ex.1003. Further still, Dr. Min repeatedly provides technical reasoning to support his statements and understandings of the references. *See generally*, Ex.1003.

Patent Owner accuses Dr. Min's analysis of inconsistencies where there are none. Patent Owner attempts to draw a distinction between Dr. Min's more general statement that "Omichi's system is performing an AND operation" with Dr. Min's more specific explanation that "a POSITA would have understood that comparing bits in the manner described by Omichi is effectively performing a Boolean AND operation." But regardless of the level of specificity, Dr. Min is performing the appropriate role of explaining how Omichi's teachings would be understood by a POSITA at the time.

Patent Owner further seeks to distinguish Omichi's teachings from the claimed step of "superimposing." DD Req., 42-43. But nowhere does Patent Owner provide a definition or construction of "superimposing" such that Omichi's comparison of bit tables would be excluded. Patent Owner is not entitled to a patent that uses new words (e.g., superimposing) to describe old ideas.

Institution is favored because the Petition relies on the cited patent references—not merely Dr. Min's opinions—for each and every limitation of the claims.

VII. Discretionary denial under *Fintiv* is not warranted.

The *Fintiv* factors, considered as a whole, do not warrant denial. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential). Every factor either favors institution or is neutral.

A. Factor 1 is neutral: No evidence regarding a stay.

No motion to stay has been filed, so the Board should not infer the outcome of such a motion. *Sand Revolution II, LLC v. Continental Intermodal Grp. Trucking LLC*, IPR2019-01393, Paper 24 at 7 (June 16, 2020) (informative). Because the granting of a stay is speculative, this factor is at least neutral.

B. Factor 2 is neutral: trial is likely to be around the same time as the projected statutory deadline.

The scheduled trial date of October 19, 2026 is likely to be delayed, given that seven trials are scheduled for the same day. Ex.1018 (October 19, 2026 Schedule). This delay could cause the start of trial to be postponed until after the deadline for FWD on December 25, 2026. *See Boe Tech. Grp. Co. v. Optronix Sci. LLC*, IPR2024-01130, Paper 16 at 10 (Jan. 27, 2025) ("Because a number of cases are scheduled for jury selection on January 5, 2026 in addition to the parallel proceeding, there is some uncertainty whether the trial in that proceeding would

actually begin on that date. ... even a brief postponement of the trial ... may delay trial in the parallel proceeding until after a final decision would issue in an *inter partes* review.”).

Under *Fintiv*, “[i]f the court’s trial date is at or around the same time as the projected statutory deadline... the decision whether to institute will likely implicate other factors.” *Fintiv* at 9. Because the trial date is likely to be delayed until near or after the Final Written Decision, other factors should be taken into consideration, such as Petitioner’s *Sotera* stipulation (Factor 4 below).

Accordingly, Factor 2 weighs against denial.

C. Factor 3 weighs against denial: Minimal relevant investment and diligent filing.

Factor 3 weighs against discretionary denial because the co-pending litigation is in its early stages.

Investment in the related proceeding has been minimal, as the Markman hearing is scheduled for four months after the institution decision deadline. Ex.2032, 3. Per *Fintiv*, “[i]f, at the time of the institution decision, the district court has not issued orders related to the patent at issue in the petition, this fact weighs against exercising discretion to deny institution.” *Fintiv*, 10. In the district court, preliminary claim constructions are not due until January 6, 2026, and Markman is not until April 22, 2026. Ex.2033, p.3. The court will therefore not issue an order related to claim construction until long after the institution decision is set to occur

by December 25, 2025. The lack of an order addressing a dispute related to the '859 patent thus weighs against discretionary denial.

Because investment in the related proceeding has been relatively minimal, Factor 3 weighs strongly against denial.

D. Factor 4 weighs strongly against denial: Petitioner's "*Sotera*" stipulation.

Factor 4 weighs strongly against denial given that Petitioner has made a *Sotera* stipulation. As stated in the Petition:

Petitioner stipulates, consistent with the stipulation made by the Petitioner in *Sotera* that, if the PTAB institutes this IPR, Petitioner will not pursue in this litigation against the claims challenged in this IPR, (i) the specific grounds raised, or (ii) any other grounds that could have reasonably been raised before the PTAB in that instituted proceeding (*i.e.*, any ground that could have reasonably been raised under §§ 102 or 103 on the basis of prior art patents or printed publications).

Petition, 16-17.

Petitioner is entitled to defend itself in district court using system prior art in combination with patents and printed publications. In *Ingenico*, the Federal Circuit held that "Congress intentionally limited an IPR's scope to invalidity challenges based on 'prior art consisting of patents or printed publications.'" *Ingenico*, 136 F.4th at 1365. Because the Board does not have the statutory authority to resolve so-called "combination" invalidity arguments which derive from system prior art

and printed publications, petitioners are not estopped from such combinations by an IPR. Petitioner's ability to present invalidity grounds relying on system art in district court is not an inefficiency issue as Patent Owner asserts. Nor does it represent any duplication of effort between the two tribunals. Rather, it is consistent with the intent of the America Invents Act, which prohibits certain issues relating to invalidity from being addressed via an IPR challenge.

Also favoring referral under Factor 4 is that the Petition challenges more claims than what is currently asserted. Patent Owner's complaint asserts only a single claim. Ex.1012, 12. The Petition, however, challenges all 12 claims of the '859 patent. Accordingly, should this case be referred to a merits panel and instituted, the Board will be reviewing 11 claims that are not being addressed in District Court. And it is a good use of the Board's resources to review these claims because Patent Owner may assert them against Petitioner, or others, in the future.

Petitioner's *Sotera* stipulation thus weighs against denial.

E. Factor 5 is neutral: Petitioner is a defendant in the parallel litigation.

Petitioner Cisco Systems, Inc. is a defendant in the parallel litigation. That is true of most IPR petitioners, therefore, this factor is neutral. *See HP Inc. v. Slingshot Printing LLC*, IPR2020-01084, Paper 13 at 9 (Jan. 14, 2021); *see also NVIDIA Corp. v. Invensas Corp.*, IPR2020-00603, Paper 11 at 23 (Sept. 3, 2020) (this factor weighs against discretionary denial where the district court trial and

IPR final written decision are expected “around the same time”).

F. Factor 6 weighs against denial: The merits of the Petition are particularly strong.

Factor 6 favors institution because the Petition clearly shows that the '859 patent claims only well-known subject matter. As discussed above in Section IV, Omichi describes the same concept that is claimed in the '859 patent. Accordingly, Factor 6 along with the other factors described above favor referral.

VIII. Conclusion

For the above reasons, Petitioner respectfully requests that the Director refrain from denying this petition and instead pass it to a merits panel for consideration.

Respectfully submitted,

Date: September 25, 2025

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Opposition to Patent Owner's Request for Discretionary Denial
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PETITIONER'S EXHIBIT LIST

Ex.1001	U.S. Patent No. 7,061,859
Ex.1002	Prosecution History of U.S. Patent No. 7,061,859.
Ex.1003	Declaration of Dr. Paul Min under 37 C.F.R. § 1.68.
Ex.1004	<i>Curriculum Vitae</i> of Dr. Min
Ex.1005	Japanese Patent Publication No. JP2001053772A to Omichi ("Omichi")
Ex.1006	The Authoritative Dictionary of IEEE Standards Terms: Seventh Edition (2000)
Ex.1007	U.S. Patent No. 7,500,016 to Kao ("Kao")
Ex.1008	U.S. Patent No. 5,515,376 to Murthy ("Murthy")
Ex.1009	U.S. Patent No. 5,768,526 to Fawcett ("Fawcett")
Ex.1010	Japanese Patent Publication No. JP2001053772A (Japanese original), obtained from https://worldwide.espacenet.com/patent/search/family/016857525/publication/Jp2001053772A
Ex.1011 (New)	Orckit Patent Portfolio Marketing Material
Ex.1012 (New)	Complaint, <i>Quicker Connections LLC v. Cisco Systems, Inc.</i>, No. 2-24-cv-01074 (E.D. Tex. Dec. 24, 2024).
Ex.1013 (New)	Cisco Systems, Inc. Form 10-k
Ex.1014 (New)	Cisco Networking Academy Impact
Ex.1015 (New)	Cisco GEMMS Contract Details

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Ex.1016 (New)	Public Sector Highlights – Cisco Blog
Ex.1017 (New)	IPR Economic Impact Study
Ex.1018 (New)	EDTX Docket Report – Oct 19, 2026

CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), Petitioner hereby certifies, in accordance with and reliance on the word count provided by the word-processing system used to prepare this Opposition, that the number of words in this paper is 3,642. Pursuant to 37 C.F.R. § 42.24(d), this word count excludes the table of contents, table of authorities, mandatory notices under § 42.8, certificate of service, certificate of word count, appendix of exhibits, and any claim listing.

Date: September 25, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies, under 37 C.F.R. § 42.6, that service was made on the Patent Owner as detailed below.

Date of service September 25, 2025

Manner of service Electronic Email: erobinson@brownrudnick.com; idiBernardo@brownrudnick.com; hlaidlaw@brownrudnick.com; jpartridge@brownrudnick.com; jpiana@brownrudnick.com; hrafatijo@brownrudnick.com; pdunn@brownrudnick.com; and QC-Cisco@brownrudnick.com

Documents served **Petitioner's Opposition to Patent Owner's Request for Discretionary Denial; Exhibits Ex.1011-1018.**

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