

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

CISCO SYSTEMS, INC.,  
Petitioner,

v.

FATPIPE NETWORKS PRIVATE LIMITED,

Patent Owner.

---

Case IPR2017-01845

U.S. Patent No. 6,775,235

---

**PATENT OWNER'S PRELIMINARY RESPONSE**

**TABLE OF CONTENTS**

I. Introduction ..... 1

II. The Governing Standard For Privity Under the AIA..... 2

    A. Privity is broader than real party-in-interest and does not necessarily require control..... 2

    B. The parties need not be in privity at the time the statutorily-referenced complaint was served..... 6

III. Petitioner’s filing represents a “second bite at the apple” for a shared interest with Viptela. .... 10

    A. Cisco had signed a “definitive agreement” with Viptela to acquire Viptela before the Petition Filing ..... 10

    B. Explicit privity currently exists between Cisco and Viptela. .... 13

    C. Petitioner has no apparent independent interest in the ‘235 patent aside from the relationship with Viptela. .... 14

    D. The gap between Viptela’s time bar and Cisco’s actual acquisition of Viptela represents a *de facto* extension of Viptela’s time period to file a petition..... 15

    E. The instant Petition represents an extension of Viptela’s serial filings, and a clear attempt to correct the deficiencies of Viptela’s filings, which Viptela would not have been able to do on its own..... 16

    F. The Board should also deny serial Petitions such as the instant Petition under 35 U.S.C. §325(d). .... 20

IV. Conclusion..... 21

**TABLE OF AUTHORITIES**

**Cases**

*ABB Technology, Ltd. V. IPCO, LLP* ..... 8  
IPR2014-00147, 2014 WL 2213423 (PTAB May 23, 2014)

*Azure Gaming v. MGT Gaming,*  
IPR2014-01288, Paper No. 13 (PTAB Feb. 20, 2015) ..... 3, 4

*Chi Mei Innolux Corp. v. Semiconductor Energy  
Laboratory Co., LTD.*  
IPR2013-00028, 2013 WL 5970145 (PTAB Mar. 21, 2013) ..... 8

*Hewlett-Packard Co. v. Tech. Properties LTD., LLC,*  
IPR2013-00217, 2013 WL 8701599 (PTAB Oct. 10, 2013) ..... 9

*Synopsys, Inc. v. Mentor Graphics Corp.,*  
IPR2012-00042, 2014 WL 722009 (PTAB Feb. 19, 2014) ..... 6

*Taylor v. Sturgell*  
553 U.S. 880 (2008) ..... 3, 4, 5

*Toyota Motor Corp. v. Cellport Sys., Inc.,*  
Case IPR2015-01423, Paper 7 (PTAB Oct. 28, 2015) ..... 18

*Underwood Livestock, Inc. v. U.S.,*  
417 Fed. Appx. 934 (Fed. Cir. Mar. 31, 2011) ..... 5

*VMware, Inc. v. Good Technology, Inc.,*  
IPR2014-01324, Paper No. 28 (PTAB Feb. 20, 2015) ..... 7, 8

**Statutes**

35 U.S.C. § 315..... *passim*

35 U.S.C. § 325..... *passim*

**Rules**

37 C.F.R. § 42.107..... 1  
37 C.F.R. § 42.6(e)..... 22

**Regulations**

77 Fed. Reg. at 48,759 ..... 2, 7  
77 Fed. Reg. at 48760 ..... 3

**Other Authorities**

157 CONG. REC. S1326 (daily ed. Mar. 7, 2011)..... 6  
H. Rep. No. 112-98..... 5

**TABLE OF EXHIBITS**

<b>Exhibit</b>	<b>Description</b>
<b>2001</b>	Cisco Press Release Announcing Intent to Acquire Viptela
<b>2002</b>	Viptela Announcement of Acquisition by Cisco
<b>2003</b>	Paper 015 for IPR2017-00684
<b>2004</b>	Cisco Press Release Announcing Completion of Acquisition of Viptela
<b>2005</b>	Patent Owner Preliminary Response for IPR2017-00684
<b>2006</b>	Patent Owner Preliminary Response for IPR2017-01125
<b>2007</b>	Cisco Blog May 2, 2017
<b>2008</b>	Cisco Blog May 8, 2017
<b>2009</b>	Paper 008 for IPR2017-00684
<b>2010</b>	Paper 008 for IPR2017-00680
<b>2011</b>	Patent Owner Preliminary Response for IPR2017-00680
<b>2012</b>	Patent Owner Preliminary Response for IPR2017-01126

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.