

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

Patent 6,775,235

PETITIONER'S REPLY

TO PATENT OWNER'S PRELIMINARY RESPOSNE

PETITIONER'S EXHIBIT LIST

November 22, 2017

EX1001	U.S. Patent No. 6,775,235 by Sanchaita Datta and Ragula Bhaskar entitled "Tools and Techniques for Directing Packets Over Disparate Networks"
EX1002	File History of U.S. Patent No. 6,775,235
EX1003	U.S. Patent No. 7,406,048 by Sanchaita Datta and Ragula Bhaskar entitled "Tools and Techniques for Directing Packets Over Disparate Networks"
EX1004	File History of U.S Patent No. 7,406,048
EX1005	Declaration of Dr. Narasimha Reddy
EX1006	U.S. Patent No. 6,243,754 to Guerin <i>et al.</i>
EX1007	U.S. Patent No. 6,748,439 to Monachello <i>et al.</i>
EX1008	"Inside Cisco IOS Software Architecture" by Bollapragada et al.
EX1009	Declaration of David Bader
EX1010	Dictionary Definition of "disparate"
EX1011	File History of U.S. Application No. 10/034,197
EX1012	U.S. Patent No. 6,122,743 to Shaffer et al.
EX1013	Frame Relay Technology and Practice by Jeff T. Buckwalter

Petitioner's Reply to Patent Owner's Preliminary Response
IPR2017-01845 (U.S. Patent 6,775,235)

EX1014	"Virtual Private Networks" by Fowler
EX1015	U.S. Patent No. 7,296,087 to Peter J. Ashwood Smith
EX1016	The Case for Persistent-Connection HTTP by Jeffrey C. Mogul
EX1017	File History of U.S. Provisional Application No. 60/355,509
EX1018	Microsoft Computer Dictionary Definition of "load balancing"
EX1019	RFC1918
EX1020	Internetworking with TCP/IP by Douglas E. Comer
EX1021	Declaration of David O'Brien
EX1022	Declaration of Robert Hilton
EX1023	Cardinal IP Patent Search Report

Pursuant to the Order issued November 16, 2017 (Paper 10), Petitioner submits this reply to Patent Owner's Preliminary Response ("POPR") filed November 7, 2017 (Paper 9). Petitioner respectfully submits that the factors enumerated in *General Plastic Indus. Corp. v. Canon Kabushiki Kaisha* do not support discretionary denial under § 314(a). Case IPR2016-01357 (PTAB Sept. 6, 2017) (Paper 19) (precedential). Further, Patent Owner's privity allegations rest on a misapplication of relevant law. The Board should institute trial on all grounds.

I. Discretionary Denial Under § 325(d) or § 314(a) is Not Warranted

Cisco's Petition addressed the Board's discretion and argued that discretionary denial was unwarranted, because all of the references, arguments, and evidence were entirely new and had never been considered. Petition, pp. 13-14.

When analyzed under the framework of the factors enumerated and made precedential in *General Plastic*, discretionary denial under § 314(a) remains unwarranted. The *General Plastic* factors focus on situations in which one petitioner files multiple *inter partes* review petitions against the same claims of the same patent. *See, e.g., General Plastic* at 17 n. 14. That is not the case here: at the filing of the petition, Cisco had not filed any previous petition challenging the '235 Patent, and as shown below, Cisco and Viptela were not in privity when the Petition was filed. However, at least one panel has found *General Plastic* to provide a "useful framework" for analyzing situations "in which a different

petitioner filed a petition challenging a patent that had been challenged already by previous petitions.” *NetApp Inc. v. Realtime Data LLC*, Case IPR2017-01354, slip op. at 10 (PTAB Nov. 14, 2017) (Paper 16).

As to the *first factor*, Cisco has not previously filed a petition directed to the same claims of the '235 Patent, and Cisco's independent petition seeks review of claims not challenged by any previous petition. This factor therefore weighs in favor of considering Cisco's petition on the merits.

The Board has found the *second factor* to be directed to situations in which the *same* petitioner files two separate petitions at different times (*cf. NetApp*, slip op. at 11); thus, to the extent this factor applies, it weighs in favor of Cisco's Petition. But even if this second factor is relevant to two petitions with different petitioners, it still weighs in favor of Cisco's independent Petition. At the time any of the previous petitions challenging the '235 Patent was filed, Cisco's counsel was not aware of Guerin (U.S. Patent No. 6,243,754, Ex. 1006), the prior art reference used in all grounds of the instant petition. Ex. 1021, ¶ 3. Guerin was discovered by Cisco's counsel on or about May 15, 2017. *Id.* Viptela did not have any input or control over Cisco's independently sought Petition, and Viptela did not provide Cisco with Guerin or any other reference or input. *Id.* at ¶¶ 5-6. Cisco is not, and cannot be understood to be asserting grounds for Viptela as a proxy.

As addressed below, Viptela was a separate entity, and not a privy. To the

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