

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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JUNIPER NETWORKS, INC.

Petitioner,

v.

ORCKIT CORPORATION

Patent Owner.

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Case IPR2024-00037

U.S. Patent No. 10,652,111

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**MOTION FOR JOINDER TO  
*INTER PARTES* REVIEW IPR2023-00554**

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. STATEMENT OF MATERIAL FACTS .....1

III. STATEMENT OF REASONS FOR RELIEF REQUESTED .....2

A. LEGAL STANDARD .....2

B. PETITIONER’S MOTION FOR JOINDER IS TIMELY. ....3

C. THE BOARD SHOULDN’T EXERCISE DISCRETION UNDER §314(A).  
.....3

D. ALL FOUR *KYOCERA* FACTORS WEIGH IN FAVOR OF JOINDER. ....4

IV. CONCLUSION.....7

## I. INTRODUCTION

Juniper Networks, Inc. (“Juniper” or “Petitioner”) respectfully submits this Motion for Joinder along with a Petition for *Inter Partes* review of U.S. Patent No. 10,652,111 (“the Juniper Petition”). The Patent Trial and Appeal Board (“Board”) instituted *Cisco Systems, Inc. v. Orckit Corp.*, IPR2023-00554 (“Cisco IPR”) on September 20, 2023. Pursuant to 35 U.S.C. §315(c) and 37 C.F.R. §42.122(b), Juniper requests institution of *inter partes* review and joinder with the Cisco IPR. As detailed below, doing so won’t unduly burden or prejudice the parties to the Cisco IPR and will efficiently resolve the question of the validity of U.S. Patent No. 10,652,111 (“the ’111 Patent”) in a single proceeding.

## II. STATEMENT OF MATERIAL FACTS

1. On July 22, 2022, Patent Owner, Orckit Corporation (“Orckit”) filed a civil action against Cisco Systems, Inc. asserting four patents, including the ’111 Patent.<sup>1</sup>
2. Cisco filed the Cisco IPR on February 21, 2023.
3. On July 28, 2023, Patent Owner filed a civil action against Arista Networks, Inc. asserting three patents, including the ’111 Patent.<sup>2</sup>

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<sup>1</sup> *Orckit Corporation v. Cisco Systems, Inc.*, No. 2:22-cv-00276 (E.D. Tex.).

<sup>2</sup> *Orckit Corporation v. Arista Networks, Inc.*, No. 1:23-cv-00821 (D. Del.).

4. On July 31, 2023, Patent Owner filed a civil action against Juniper asserting three patents, including the '111 Patent.<sup>3</sup>

5. The Board instituted trial in the Cisco IPR on September 20, 2023.<sup>4</sup>

### III. STATEMENT OF REASONS FOR RELIEF REQUESTED

#### A. Legal Standard

The Board may join as a party to an instituted IPR any person who has properly filed a petition for IPR that warrants institution.<sup>5</sup> Any request for joinder must be filed “no later than one month after the institution date of any inter partes review for which joinder is requested.”<sup>6</sup> The statute requires the Board to determine whether the joinder applicant’s petition warrants institution under §314, and, to effect joinder, requires the Director to exercise her discretion to decide whether to join the joinder applicant.<sup>7</sup> Applying this standard, the Board first analyzes the petition’s merits and whether it should exercise discretion to deny

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<sup>3</sup> *Orckit Corporation v. Juniper Networks, Inc.*, No. 1:23-cv-00822 (D. Del.).

<sup>4</sup> *See Cisco Systems, Inc. v. Orckit Corp.*, IPR2023-00554, Paper 8 (P.T.A.B. Sept. 20, 2023).

<sup>5</sup> 35 U.S.C. §315(c).

<sup>6</sup> 37 C.F.R. §42.122(b).

<sup>7</sup> *Facebook, Inc. v. Windy City Innovations, LLC*, 973 F.3d 1321, 1332 (Fed. Cir. 2020).

institution.<sup>8</sup> Then, the Board considers the *Kyocera* factors, which include: the reasons why joinder is appropriate, whether the petition presents new grounds of unpatentability, what impact joinder will have on the trial schedule, and how simplification of briefing and discovery might occur to minimize any trial schedule impact.<sup>9</sup>

**B. Petitioner’s Motion for Joinder is Timely.**

Juniper files this Motion for Joinder within one month of the September 20, 2023 institution decision of the Cisco IPR.

**C. The Board Shouldn’t Exercise Discretion Under §314(a).**

The Juniper Petition details the reasons why the Board shouldn’t exercise its discretion to deny Juniper’s first challenge to the ’111 Patent. The Board previously found the Cisco IPR merited institution. The Juniper Petition relies on the same evidence presented in the Cisco IPR including Cisco’s expert testimony.<sup>10</sup> Institution of the Juniper Petition is therefore appropriate for similar reasons.

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<sup>8</sup> See, e.g., *AT&T Servs., Inc. v. Broadband iTV, Inc.*, IPR2021-00556, Paper No. 14 (P.T.A.B. Aug. 25, 2021).

<sup>9</sup> See *Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper No. 15 at 4 (P.T.A.B. Apr. 24, 2013).

<sup>10</sup> See, e.g., *OpenSky Indus., LLC v. VLSI Tech. LLC*, IPR2021-01064, Paper 102 at 9 (P.T.A.B. Oct. 4, 2022) (acknowledging the propriety of “copycat” petitions utilizing the same evidence including refiled declarations).

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