

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

CENTRIPETAL NETWORKS, INC.,
Patent Owner.

Case No. IPR2018-01512
Patent No. 9,565,213

**PATENT OWNER'S OBJECTIONS TO EVIDENCE IN
PETITIONER'S REPLY UNDER 37 C.F.R. § 42.64**

Patent Owner Centripetal Networks, Inc. (“Centripetal” or “Patent Owner”) objects under the Federal Rules of Evidence and 37 C.F.R. § 42.64(b)(1) to the admissibility of the following documents submitted by Petitioner Cisco Systems, Inc. (“Petitioner” or “Cisco”) in its Reply to Patent Owner’s Response (“Reply”).

Petitioner’s Reply was filed on October 7, 2019.¹ Patent Owner’s objections are timely under 37 C.F.R. § 42.64(b)(1). Patent Owner serves Petitioner with these objections to provide notice that Patent Owner will move to exclude these exhibits as improper evidence.

I. PETITIONER’S EVIDENCE

A. Declaration of Dr. Kevin Jeffay, Ph.D. in Support of Petitioner’s Reply to Patent Owner Response (Ex. 1020, the “Jeffay Reply Declaration”)

Patent Owner objects to the admissibility of the Jeffay Reply Declaration for at least the following reasons.

Patent Owner objects to the Jeffay Reply Declaration as untimely because Petitioner should have introduced it in its Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b). Patent Owner objects to the Jeffay Reply Declaration because it

¹ Petitioner filed the wrong document on October 7, 2019. *See* Paper No. 17.

Patent Owner received a copy of the correct Petitioner’s Reply on October 9, 2019.

is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

Patent Owner objects to the Jeffay Reply Declaration as not relevant under **FRE 401** and **FRE 402** because it exceeds the proper scope of Petitioner's Reply. *See* 37 C.F.R. § 42.23(b). Patent Owner further objects to the Jeffay Reply Declaration under **FRE 403** because of the prejudice arising from Patent Owner's inability to respond to the untimely evidence and arguments therein.

Under **FRE 702**, Dr. Jeffay's opinions are inadmissible because they are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable. Additionally, Dr. Jeffay is unqualified as an expert to provide technical opinions of a person skilled in the art. *See* Ex. 1003, ("Jeffay CV"). As such, his opinions are inadmissible under **FRE 702**.

To the extent that Petitioner attempts to rely on any date that appears in the Jeffay Reply Declaration to establish public accessibility as a printed publication, the date is hearsay under **FRE 801** and is inadmissible under **FRE 802** and **FRE 803**, and further, the date has not been authenticated and is inadmissible under **FRE 901**.

Patent Owner objects to the Jeffay Reply Declaration because it does not introduce evidence of Dr. Jeffay's personal knowledge of the subject matter of the

testimony contained therein, rendering such testimony inadmissible under **FRE 602**.

Patent Owner also objects to the Jeffay Reply Declaration because it is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** and **FRE 803**.

Dr. Jeffay's opinions are not relevant under **FRE 401** and **FRE 402**. Moreover, the Jeffay Reply Declaration is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and is therefore inadmissible under **FRE 403**. Further, his opinions that rely on the exhibits cited therein are also unreliable and inadmissible for the reasons discussed above.

B. Deposition Transcript of Michael Goodrich in IPR2018-01386, dated July 17, 2019 (Ex. 1021, the "IPR2018-01386 Goodrich Transcript")

Patent Owner objects to the admissibility of the IPR2018-01386 Goodrich Transcript for at least the following reasons.

Patent Owner further objects to the IPR2018-01386 Goodrich Transcript under **FRE 403** because of the prejudice arising from Patent Owner's inability to respond to the untimely evidence and arguments therein.

Patent Owner objects to the IPR2018-01386 Goodrich Transcript as inadmissible under **FRE 401 - FRE 403** because Petitioner uses citations out of context and bases arguments thereupon.

Patent Owner objects to the portions of the IPR2018-01386 Goodrich Transcript that Petitioner does not cite to or rely on in its Reply. Such evidence is not relevant under **FRE 401** and is inadmissible under **FRE 402**. Any attempt by Petitioner to rely on these portions would be highly prejudicial to Patent Owner under **FRE 403**.

C. Broad Agency Announcement 10-004 (Ex. 1022)

Centripetal objects to the admissibility of the Broad Agency Announcement 10-004 (Ex. 1022) for at least the following reasons.

Patent Owner objects to the Broad Agency Announcement 10-004 as untimely because Petitioner should have introduced it in its Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b). Patent Owner objects to the Broad Agency Announcement 10-004 because it is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

Petitioner has failed to authenticate the Broad Agency Announcement 10-004 and specifically, Petitioner has failed to establish that the Broad Agency Announcement 10-004 is what Petitioner claims it is and thus it is inadmissible under **FRE 901**. Furthermore, to the extent Petitioner attempts to rely on the date that appears on the Broad Agency Announcement 10-004 to establish public accessibility as a printed publication, the date is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803** because Petitioner

has failed to authenticate the date by which the Broad Agency Announcement 10-004 was allegedly publicly accessible. Moreover, because the date has not been authenticated, it is also inadmissible under **FRE 901**. Further, the Board did not rely on the Broad Agency Announcement 10-004 in its Institution Decision. Accordingly, for the foregoing reasons, the Broad Agency Announcement 10-004 is irrelevant, confusing, and of minimal probative value under FRE 401, 402, and 403.

D. Wikipedia page on “List of HTTP Header Fields (Ex. 1023, the “Wikipedia Page”)

Centripetal objects to the admissibility of the Wikipedia Page (Ex. 1023) for at least the following reasons.

Patent Owner objects to the Wikipedia Page as untimely because Petitioner should have introduced it in its Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b). Patent Owner objects to the Wikipedia Page because it is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

Petitioner has failed to authenticate the Wikipedia Page and specifically, Petitioner has failed to establish that the Wikipedia Page is what Petitioner claims it is and thus it is inadmissible under **FRE 901**. Furthermore, to the extent Petitioner attempts to rely on the date that appears on the Wikipedia Page to establish public accessibility as a printed publication, the date is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803**

because Petitioner has failed to authenticate the date by which the Wikipedia Page was allegedly publicly accessible. Moreover, because the date has not been authenticated, it is also inadmissible under **FRE 901**. Further, the Board did not rely on the Wikipedia Page in its Institution Decision. Accordingly, for the foregoing reasons, the Wikipedia Page is irrelevant, confusing, and of minimal probative value under FRE 401, 402, and 403.

E. Request for Comment (RFC) 5424 (Ex. 1025, the “RFC 5424”)

Centripetal objects to the admissibility of RFC 5424 (Ex. 1025) for at least the following reasons.

Patent Owner objects to RFC 5424 as untimely because Petitioner should have introduced it in its Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b). Patent Owner objects to RFC 5424 because it is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

Petitioner has failed to authenticate RFC 5424 and specifically, Petitioner has failed to establish that RFC 5424 is what Petitioner claims it is and thus it is inadmissible under **FRE 901**. Furthermore, to the extent Petitioner attempts to rely on the date that appears on RFC 5424 to establish public accessibility as a printed publication, the date is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803** because Petitioner has failed to authenticate the date by which RFC 5424 was allegedly publicly accessible. Moreover, because

the date has not been authenticated, it is also inadmissible under **FRE 901**.

Further, the Board did not rely on RFC 5424 in its Institution Decision.

Accordingly, for the foregoing reasons, RFC 5424 is irrelevant, confusing, and of minimal probative value under FRE 401, 402, and 403.

F. Deposition Transcript of Michael Goodrich, dated August 29, 2019 (Ex. 1026, the "August Goodrich Transcript")

Patent Owner objects to the admissibility of the August Goodrich Transcript for at least the following reasons.

Patent Owner objects to the August Goodrich Transcript as not relevant under **FRE 401** and **FRE 402** because it exceeds the proper scope of Petitioner's Reply. *See* 37 C.F.R. § 42.23(b). Patent Owner further objects to the August Goodrich Transcript under **FRE 403** because of the prejudice arising from Patent Owner's inability to respond to the untimely evidence and arguments therein.

Patent Owner objects to the August Goodrich Transcript as inadmissible under **FRE 401 - FRE 403** because Petitioner uses citations out of context bases arguments thereupon.

Patent Owner objects to the portions of the August Goodrich Transcript that Petitioner does not cite to or rely on in its Reply. Such evidence is not relevant under **FRE 401** and is inadmissible under **FRE 402**. Any attempt by Petitioner to rely on these portions would be highly prejudicial to Patent Owner under **FRE 403**.

**G. Supplemental Declaration of Eli Fuchs, dated October 7, 2019
(Ex. 1027, the "Supplemental Fuchs Declaration")**

Patent Owner objects to the admissibility of the Supplemental Fuchs Declaration for at least the following reasons.

Patent Owner objects to the Supplemental Fuchs Declaration as untimely because Petitioner should have introduced it in its Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b). Patent Owner objects to the Supplemental Fuchs Declaration because it is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

Patent Owner objects to the Supplemental Fuchs Declaration as not relevant under **FRE 401** and **FRE 402** because it exceeds the proper scope of Petitioner's Reply. *See* 37 C.F.R. § 42.23(b). Patent Owner further objects to the Supplemental Fuchs Declaration under **FRE 403** because of the prejudice arising from Patent Owner's inability to respond to the untimely evidence and arguments therein.

Under **FRE 702**, Mr. Fuchs opinions are inadmissible because they are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable. As such, his opinions are inadmissible under **FRE 702**.

To the extent that Petitioner attempts to rely on any date that appears in the Supplemental Fuchs Declaration to establish public accessibility as a printed publication, the date is hearsay under **FRE 801** and is inadmissible under **FRE 802**

and **FRE 803**, and further, the date has not been authenticated and is inadmissible under **FRE 901**.

Patent Owner objects to the Supplemental Fuchs Declaration because it does not introduce evidence of Mr. Fuchs' personal knowledge of the subject matter of the testimony contained therein, rendering such testimony inadmissible under **FRE 602**.

Patent Owner also objects to the Supplemental Fuchs Declaration because it is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** and **FRE 803**.

Mr. Fuchs' opinions are not relevant under **FRE 401** and **FRE 402**. Moreover, the Supplemental Fuchs Declaration is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and is therefore inadmissible under **FRE 403**. Further, his opinions that rely on the exhibits cited therein are also unreliable and inadmissible for the reasons discussed above.

H. Release Notes for Cisco ACNS Software, Release 5.5.1, dated May 12, 2006 (Ex. 1028, the "Cisco ACNS Release Notes")

Centripetal objects to the admissibility of Cisco ACNS Release Notes (Ex. 1028) for at least the following reasons.

Patent Owner objects to Cisco ACNS Release Notes as untimely because Petitioner should have introduced it in its Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b). Patent Owner objects to Cisco ACNS Release Notes because it

is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

Petitioner has failed to authenticate RFC 5424 and specifically, Petitioner has failed to establish that Cisco ACNS Release Notes is what Petitioner claims it is and thus it is inadmissible under **FRE 901**. Furthermore, to the extent Petitioner attempts to rely on the date that appears on Cisco ACNS Release Notes to establish public accessibility as a printed publication, the date is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803** because Petitioner has failed to authenticate the date by which Cisco ACNS Release Notes was allegedly publicly accessible. Moreover, because the date has not been authenticated, it is also inadmissible under **FRE 901**. Further, the Board did not rely on Cisco ACNS Release Notes in its Institution Decision. Accordingly, for the foregoing reasons, Cisco ACNS Release Notes is irrelevant, confusing, and of minimal probative value under **FRE 401, 402, and 403**.

I. Results of Internet Archive Search for Release Notes for Cisco ACNS Software, Release 5.5.1 (Ex. 1029, the “Archive Search for Release Notes”) and Results of Internet Archive Search for Cisco ACNS Software Configuration Guide, Release 5.5 (Ex. 1030, the “Archive Search for Cisco ACNS”)

Centripetal objects to the admissibility of the Archive Search for Release Notes (Ex. 1029) and the Archive Search for Cisco ACNS (Ex. 1030) (collectively, “Archive Search”) for at least the following reasons.

Patent Owner objects to the Archive Search as untimely because Petitioner should have introduced it in its Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b). Patent Owner objects to Archive Search because it is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

Petitioner has failed to authenticate Archive Search and specifically, Petitioner has failed to establish that Archive Search is what Petitioner claims it is and thus it is inadmissible under **FRE 901**. Furthermore, to the extent Petitioner attempts to rely on the date that appears on Archive Search to establish public accessibility as a printed publication, the date is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803** because Petitioner has failed to authenticate the date by which Archive Search was allegedly publicly accessible. Moreover, because the date has not been authenticated, it is also inadmissible under **FRE 901**. Further, the Board did not rely on Archive Search in its Institution Decision. Accordingly, for the foregoing reasons, Archive Search is irrelevant, confusing, and of minimal probative value under FRE 401, 402, and 403.

J. Objections to Exhibits Based on Relevance

In addition to the Objections set forth above, Patent Owner further objects to the admissibility of the following Exhibits under FRE 401, 402 and 403 because Petitioner did not rely on these Exhibits in its Petition: Exhibits 1015 and 1017.

Patent Owner's Objections to Evidence
IPR2018-01512 (U.S. Patent No. 9,565,213)

Respectfully submitted,

Dated: October 14, 2019

/James Hannah /

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(Case No. IPR2018-01512)

Attorneys for Patent Owner

CERTIFICATE OF SERVICE

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

Date of service October 14, 2019

Manner of service Electronic Mail

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Documents served PATENT OWNER'S OBJECTIONS TO EVIDENCE

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