

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

CISCO SYSTEMS, INC.,  
Petitioner

v.

CENTRIPETAL NETWORKS, INC.,  
Patent Owner

---

Case IPR2019-01512  
Patent 9,565,213 B2

---

Before BRIAN J. McNAMARA, STACEY G. WHITE, and  
JOHN P. PINKERTON, *Administrative Patent Judges*

McNAMARA, *Administrative Patent Judge.*

ORDER  
*Trial Hearing*  
37C.F.R. § 42.70

*Date and Time of Hearing*

A trial in this proceeding was instituted on March 20, 2019 (Paper 8, “Decision to Institute”). A contemporaneously issued Scheduling Order set the date for oral hearing to December 18, 2019, if hearing is requested by the parties and granted by the Board. Paper 9. (“Scheduling Order”).

Centripetal Networks, Inc. (“Patent Owner”) has requested oral hearing pursuant to 37 C.F.R. § 42.70. Paper 23. Patent Owner’s request is GRANTED.

**The hearing will commence at 1:00 PM ET on December 18, 2019, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.**

In-person attendance will be accommodated on a first come first serve basis. A party may request remote video attendance for one or more of its other attendees to view the hearing from any other USPTO location. The available locations include the Texas Regional Office in Dallas, Texas; the Rocky Mountain Regional Office in Denver, Colorado; the Elijah J. McCoy Midwest Regional Office in Detroit, Michigan; and the Silicon Valley Office in San Jose, CA. To request remote video viewing, a party must send an email message to Trials@uspto.gov *ten (7) business days* prior to the hearing, indicating the requested location and the number planning to view the hearing from the remote location. The Board will notify the parties if the request for video viewing is granted. Note that it may not be possible to grant the request due to the availability of resources.

*Allotted Argument Time*

Each party will have 60 minutes of total argument time. Cisco Systems, Inc. (“Petitioner”) bears the ultimate burden of proof that the

claims at issue in this review are unpatentable. Therefore, at oral hearing Petitioner will proceed first to present its challenges to patentability and on any of Petitioner's pending motions. Absent special circumstances Petitioner may reserve no more than half its time for rebuttal. Thereafter, Patent Owner may argue its opposition to Petitioner's case and present argument on any of Patent Owner's pending motions. Petitioner then may use any time Petitioner reserved to rebut Patent Owner's opposition and to oppose any of Patent Owner's motions. Finally, Patent Owner may request an opportunity to present a brief sur-rebuttal.

*Requests For Live Testimony*

Requests for live testimony will be given due consideration. A party requesting live testimony should explain why and how this consideration applies, for example where an inventor is attempting to antedate a reference by establishing a prior reduction to practice. *See K-40 Electronics, LLC v. Escort, Inc.*, IPR2013-00203 (PTAB May 21, 2014) (Paper 34). Other factors may include the importance of the issue that is the subject of the testimony. The Board is more likely to grant oral testimony critical to issues that are case-dispositive. *Id.* at 2.

*Confidentiality*

There is a strong public policy interest in making all information presented in these proceedings public, as the review determines the patentability of claims in an issued patent and thus affects the rights of the public. This policy is reflected in part, for example, in 35 U.S.C. § 316(a)(1) and 35 U.S. C. § 326(a)(1) which provide that the file of any *inter partes* review or post grant review be made available to the public, except that any petition or document filed with the intent that it be sealed shall, if

accompanied by a motion to seal, be treated as sealed pending the outcome of the ruling on the motion. There are no motions to seal in the present proceeding. Therefore the hearing will be open to the public for in-person attendance.

*Request for Pre-hearing Conference*

A pre-hearing conference to occur no later than three business days before the hearing will be held at either party's request. Prior to the requesting pre-hearing conference, the parties should meet and confer and, when possible, send a joint request to the Board by e-mail with an agreed upon set of limited issues for discussion, including but not limited to, identification of a limited number of objections for early resolution.

The purpose of a pre-hearing conference is to afford the parties the opportunity to preview (but not argue) issues to be discussed at the oral hearing, and to seek the Board's guidance as to particular issues that the panel would like the parties to address at oral argument. The parties may also discuss with the Board any pending motions to strike, request an early decision on the admissibility of a limited number of exhibits subject to a motion to exclude, and discuss any unresolved issues with demonstrative exhibits. The Board may rule on pending motions and a limited numbers of objections and disputed exhibits during the pre-hearing conference, or after the pre-hearing conference and before the oral hearing. The Board may also defer ruling until the oral hearing or thereafter.

On December 4, 2019, by e-mail the parties requested a pre-hearing conference "for guidance as to particular issues the panel would like the parties to address at oral argument." The pre-hearing conference is being scheduled.

*Demonstrative Exhibits*

Demonstrative exhibits used at the final hearing are aids to oral argument and not evidence, and should be clearly marked as such. Each slide of a demonstrative exhibit should be marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. Demonstrative exhibits cannot be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Acceleron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (noting that the “Board was obligated to dismiss [the petitioner’s] untimely argument . . . raised for the first time during oral argument”). Demonstrative exhibits should cite to evidence in the record.

During the hearing, the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the hearing to ensure the clarity and accuracy of the reporter’s transcript. The parties also should note that at least one member of the panel will be attending the hearing electronically from a remote location. If a demonstrative is not filed or otherwise made fully available or visible to the judge(s) presiding over the hearing remotely, that demonstrative will not be considered. If the parties have questions as to whether demonstrative exhibits would be sufficiently visible and available to all of the judges, the parties are invited to contact the Board at 571-272-9797.

The parties are encouraged to resolve objections by exchanging proposed demonstrative exhibits and conferring prior to submitting the exhibits to the Board. Any demonstrative exhibits must be served seven business days before the hearing. 37 C.F.R. § 42.70(b). Objections to demonstratives should be carefully considered and framed as the Board has

not found that such objections are helpful in many cases. Any unresolved issue regarding demonstrative exhibits should be addressed during the pre-hearing conference. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

Demonstratives should be filed at the Board as an Exhibit no later than two business days before the hearing. A hard copy of the demonstratives should be provided to the court reporter at the hearing.

#### *Equipment Requests*

Hearing rooms are equipped with projectors for PowerPoint presentations. A party should advise the Board as soon as possible but no less than five business days before an oral argument of any special needs. Examples of such needs include additional space for a wheelchair, an easel for posters, or an overhead projector (“Elmo”). Parties should not make assumptions about the equipment the Board may have on hand. Such requests should be directed in the first instance to a Board Trial Division paralegal at (571) 272-9797.

#### *Attendance of Counsel*

The Board expects lead counsel for each party to be present in person at the oral hearing. However, lead or backup counsel may present the party’s argument. If either party anticipates that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the Board no later than two business days prior to the oral hearing to discuss the matter.

*Official Record*

The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing. The hearing transcript will be entered into the record of the proceedings.

IPR2018-01512  
Patent 9,565,213 B2

For PETITIONER:

Daniel McDonald  
Jeffrey Blake  
Kathleen Ott  
Michael Wagner  
Christopher Davis  
MERCHANT & GOULD P.C.  
dmcdonald@merchantgould.com  
jblake@merchantgould.com  
kott@merchantgould.com  
mwagner@merchantgould.com  
cdavis@merchantgould.com

For PATENT OWNER:

James Hannah  
Jeffrey Price  
Michael Lee  
KRAMER LEVIN NAFTALIS & FRANKEL  
jhannah@kramerlevin.com  
jprice@kramerlevin.com  
mhlee@kramerlevin.com

Bradley Wright  
BANNER & WITCOFF LTD.  
bwright@bannerwitcoff.com