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PTO Practice

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APJ Stock Ownership Insufficient To Vacate

On May 16, 2023, the Federal Circuit denied a petition for a writ of mandamus to direct the Board to vacate an institution decision based on stock ownership of an administrative patent judge (APJ) in *In re Centripetal Networks, LLC*, No. 2023-127, 2023 U.S. App. LEXIS 11895 (Fed. Cir. May 16, 2023).

In re Centripetal Networks: Background Summary

Palo Alto Networks, Inc. (PAN) brought an *inter partes* review against Centripetal Networks, LLC (Centripetal) challenging various patents, including U.S. Patent No. 9,917,856 (the '856 patent), which relates to computer networking security functions. In May of 2022, a Board panel formed of three APJs (McNamara, Moore, and Amundson) instituted review of the '856 patent. Afterward, in June of 2022, Cisco Systems, Inc. (Cisco), and Keysight Technologies, Inc. joined the mix, filing IPR petitions substantively identical to PAN's petition and moving for joinder.

In a prior appeal from a related district court case (also based on the '856 patent), Centripetal had previously had a \$2.75 billion damages award vacated after the Court

concluded that disqualification was required under 28 U.S.C. § 455(b)(4) because the spouse of the trial judge owned Cisco stock. See *Centripetal Networks, Inc. v. Cisco Sys., Inc.*, 38 F.4th 1025 (Fed. Cir. 2022). In December of 2022, seeking to take a page out of Cisco's playbook, Centripetal moved for APJ McNamara's recusal and vacatur of the institution decision on the ground that he owned Cisco stock. In January 4, 2023, the Board granted Cisco's and Keysight's petitions to institute and joined the three proceedings. APJs McNamara and Amundson subsequently withdrew and were replaced by two other APJs.

On February 3, 2023, the new Board rejected Centripetal's argument that APJ McNamara's ownership of stock in Cisco required vacatur of the institution decision, since Cisco was not a party at the time of institution. The Board further contended that the statute that required disqualification in *Cisco* did not apply to the Board and that the value of APJ McNamara's stock fell below the threshold requiring recusal set by Executive Branch ethical standards. Centripetal then sought a writ of mandamus to direct the Patent Trial and Appeal Board to vacate an institution decision and constitute a new panel of APJs to reconsider the original IPR petition.

The Court's Analysis

The Federal Circuit considered whether Centripetal had properly shown the three requirements for

the "extraordinary remedy" of a writ of mandamus, namely that: (1) there are "no other adequate means to attain the relief [it] desires," (2) the "right to issuance of the writ is clear and indisputable," and (3) "the writ is appropriate under the circumstances." *Cheney v. United States Dist. Court*, 542 U.S. 367, 380-81 (2004) (internal quotation marks and citations omitted). Ultimately, the court concluded that Centripetal failed to satisfy the first requirement, since it had not shown that it will be unable to raise its arguments after the final written decision, which had not yet issued. The Court also suggested that Centripetal had not shown a clear and indisputable right to vacatur, considering that (i) Cisco was not involved in the proceedings at the time of institution, (ii) Cisco's backup capacity status, and (iii) the fact that APJ McNamara would not be a member of the panel that decides the ultimate merits in the IPR proceeding. Accordingly, the Court denied Centripetal's petition.

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