RE: *Palo Alto Networks Inc. v. Centripetal Networks Inc.* Case No. IPR2022-00182 Paper 13

Conservatives for Property Rights, a coalition of public policy organizations that view private property rights as inherent and fundamental to human flourishing, strongly supports Centripetal Networks's request for rehearing and Precedential Opinion Panel review of the decision instituting inter partes review.

CPR urges the Precedential Opinion Panel to review this IPR institution decision and establish precedent on the question, "Whether petitions filed substantially for the purpose of harassing patent owners who prevail in Article III courts, such as petitions targeting patents that have not been asserted against the petitioner but are the basis of district court judgments that are pending on appeal, should be discretionarily denied." This question holds exceptional importance as a matter of property rights, patent system integrity, patent reliability, agency efficiency and the rule of law.

The America Invents Act created PTAB as a faster, cheaper alternative to judicial litigation. AIA bestowed agency discretion to reject IPR petitions based on economic effects, patent system integrity and timely, efficient management of PTO and PTAB. These factors counterbalance the interests of challenging parties and are clearly present here.

The AIA does not subordinate Article III judicial rulings to PTAB. Thus, PTAB has appropriately denied petitions in precedential opinions such as *General Plastic* and *Fintiv* exercising statutory authority in light of court rulings on the same patents.

PTO has learned from "[m]ost commenters" that PTAB should "help ensure that patent owners are not subjected to repeated, costly litigation on the same issues." U.S. PTO Executive Summary, "Public Views on Discretionary Institution Proceedings," Jan. 2021, p. 2. Palo Alto's IPR would cause Centripetal to incur repeated litigation and substantial extra costs on issues already decided in Article III court.

In this case, Palo Alto Networks petitioned IPR proceedings after Centripetal Networks won district court judgment of willful infringement against Cisco on Patent No. 9,917,856. Palo Alto is not a party in that litigation, nor has Centripetal asserted its '856 patent against petitioner. The district court thoroughly considered and upheld the validity of the '856 patent Palo Alto now challenges. Cisco did not appeal the court's ruling on validity, which is objective indicia of nonobviousness. Palo Alto's IPR seems intended to gain leverage against Centripetal in separate litigation between the two parties while the Cisco judgment is appealed. This constitutes a third party's gamesmanship and harassment of the owner on a proven valid and infringed patent.

The issues and the potential consequences at stake in this case are quite significant and compelling. If the POP leaves them unresolved in the manner Centripetal requests, PTAB would leave open a wide avenue for patent infringers and avaricious opportunists to exploit. That conflicts with Congress's intent and with PTAB precedents.

The prospects of facilitating harassment of patent owners and gamesmanship of PTAB proceedings are more than sufficient to review this institution decision, in the interests of patent system integrity, patent reliability and the rule of law. Therefore, CPR strongly urges the board to review, vacate IPR institution and make the denial precedential.