

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

EGENERA, INC.,
Patent Owner.

Case IPR2017-01340
Patent 6,971,044

Before CHARLES J. BOUDREAU, WILLIAM M. FINK, and
MELISSA A. HAAPALA, *Administrative Patent Judges*.

HAAPALA, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On December 4, 2017, Patent Owner submitted an email request, under 37 C.F.R. § 42.20(b), seeking authorization to file a motion to dismiss for lack of jurisdiction on the basis that the *inter partes* review proceeding violates Article III and the Seventh Amendment of the Constitution. Ex. 3001. Petitioner opposes the request. *Id.*

Patent Owner indicates the purpose of its request is to preserve the issue in light of the Supreme Court's grant of certiorari in *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*, 2017 WL 2507340 (U.S. June 12, 2017). Ex. 3001. But Patent Owner also acknowledges that its argument is foreclosed under existing Federal Circuit precedent. *Id.*; *see also MCM Portfolio LLC v. Hewlett-Packard Co.*, 812 F.3d 1284 (Fed. Cir. 2015) (holding *inter partes* review does not violate Article III or the Seventh Amendment right to a jury trial).

Under the circumstances, we determine there is no need for the additional briefing that would result from filing a motion. Patent Owner's position is noted, and its request for authorization to file a motion to dismiss is denied.

It is, therefore,

ORDERED that Patent Owner's request for authorization to file a motion to dismiss is *denied*.

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For PETITIONER:
David L. McCombs
Theodore M. Foster
R. Whitman Burns
HAYNES AND BOONE, LLP
david.mccombs.ipr@haynesboone.com
ipr.theo.foster@haynesboone.com
whitman.burns.ipr@haynesboone.com

For PATENT OWNER:
Christopher Bovenkamp
John Campbell
McKOOL SMITH P.C.
cbovenkamp@mckoolsmith.com
jcampbell@mckoolsmith.com