

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CENTRIPETAL NETWORKS, INC.,)

Plaintiff,)

v.)

Civil Action No. 2:18cv94

CISCO SYSTEMS, INC.,)

Defendant.)

OPINION AND ORDER

After hearing the evidence presented by the parties during the trial on this matter, and considering the entire trial record before this Court, the Court enters the following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a). Any item marked as a finding of fact which may also be interpreted as a conclusion of law is hereby adopted as such. Any item marked as a conclusion of law which may also be interpreted as a finding of fact is hereby adopted as such.

I. PROCEDURAL POSTURE¹

1. This patent trial concerns five United States patents involving complex issues in cybersecurity technology heard by the Court without a jury.

2. The case began when Centripetal Networks, Inc. (“Centripetal”) filed a Complaint against Cisco Systems, Inc. (“Cisco”) for infringement of a number of Centripetal’s U.S. Patents on February 13, 2018. Doc. 1.

¹ All matters discussed in this Procedural Posture are procedural background and findings of fact.

3. On March 29, 2018, Centripetal filed an Amended Complaint, asserting infringement of U.S. Patent Nos. 9,566,077 (“the ‘077 Patent”), 9,413,722 (“the ‘722 Patent”), 9,160,713 (“the ‘713 Patent”), 9,124,552 (“the ‘552 Patent”), 9,565,213 (“the ‘213 Patent”), 9,674,148 (“the ‘148 Patent”), 9,686,193 (“the ‘193 Patent”), 9,203,806 (“the ‘806 Patent”), 9,137,205 (“the ‘205 Patent”), 9,917,856 (“the ‘856 Patent”), and 9,500,176 (“the ‘176 Patent”). Doc. 29.

4. Cisco has filed numerous petitions for inter partes review (“IPR”), between July 12, 2018 and September 18, 2018, before the Patent Trial and Appeals Board (“PTAB”) against nine (9) of the eleven (11) Centripetal patents originally asserted against Cisco and filed a Motion to Stay Pending Resolution of IPR Proceedings. The Court granted the stay request on February 25, 2019. Doc. 58.

5. Upon the motion of Centripetal, on September 18, 2019, the Court issued an order, lifting the stay in part with respect to patents and claims not currently subject to IPR proceedings and set the case for trial in April 2020. Doc. 68. The parties later waived a jury trial following the jury trial limitations resulting from the COVID-19 pandemic.

6. At trial, Centripetal asserted that Cisco infringes Claims 63 and 77 of the ‘205 Patent, Claims 9 and 17 of the ‘806 Patent, Claims 11 and 21 of the ‘176 Patent, Claims 18 and 19 of the ‘193 Patent and Claims 24 and 25 of the ‘856 Patent (the ‘Asserted Claims’). Doc. 411 (“Amended Final Pre-Trial Order”).

7. Of the claims not at issue for trial, the PTAB granted institution of IPR of all of the claims of the ‘552 Patent, the ‘713 Patent, the ‘213 Patent, the ‘148 Patent, the ‘077 Patent, and the ‘722 Patent and granted institution of IPR of claims of the ‘205 Patent that are not the subject of this bench trial. Doc. 411.

8. The PTAB has, thus far, invalidated all of the claims of the '552 Patent, the '713 Patent, the '213 Patent, the '148 Patent, and the '077 Patent and invalidated the unasserted claims of the '205 Patent. Centripetal has appealed or may be appealing the PTAB decisions regarding the '552 Patent, the '713 Patent, the '213 Patent, the '148 Patent, the '077 Patent, and unasserted claims of the '205 Patent. Doc. 411.

II. WITNESSES AT TRIAL

9. During the twenty-two-day bench trial, and at a later hearing on damages evidence, both parties were given the opportunity to present their evidence live through a video platform approved by the Eastern District of Virginia after Court's staff was instructed in its operation. Cisco objected to proceeding through a video platform, and also objected to using the platform utilized in favor of its own platform. In its order of April 23, 2020, the Court overruled Cisco's objections for the reasons stated therein. In light of the use of the video platform, the parties implemented specific trial protocols that are detailed in Appendix B. See Appendix B; Doc. 411 (Amended Pre-Trial Order). At the conclusion of the 22nd day of trial, the parties joined in congratulating the Court's staff for their handling of the trial evidence by means of the video platform.

10. Due to the complex nature of the technology at issue in the case, the Court requested that each party present a technology tutorial on the first day of trial. The Court has compiled a list of the abbreviations used in the testimony and documents throughout the trial and attached it as Appendix A. For Centripetal, Dr. Nenad Medvidovic presented the technology tutorial and Dr. Kevin Almeroth presented the technology tutorial for Cisco.

11. Centripetal, in its case in chief, called a variety of live fact and expert witnesses including:

- Mr. Steven Rogers – Founder and CEO of Centripetal. Tr. 228:8;
- Dr. Sean Moore – Chief Technology Officer and Senior Vice President of Research at Centripetal. Tr. 301:24-25. Dr. Moore is an inventor on all of the asserted patents in this case. Tr. 314:25, 315:1-2;
- Dr. Michael Mitzenmacher – an independent expert witness in cybersecurity who presented opinion testimony that the accused products infringe the ‘193 Patent, the ‘806 Patent and the ‘205 Patent. Tr. 431:16-23;
- Dr. Eric Cole – an independent expert witness in cybersecurity who presented opinion testimony that the accused products infringe the ‘856 Patent and the ‘176 Patent. Tr. 886:9-11, 975:19-21;
- Dr. Nenad Medvidovic – an independent expert witness in cybersecurity who opined about the importance of the patent technology in relation to the accused products. Tr. 1144:22-25, 1145:1-2;
- Mr. Jonathan Rogers – Chief Operating Officer at Centripetal. Tr. 1194:11;
- Mr. Christopher Gibbs - Senior Vice President of Sales at Centripetal. Tr. 1297:1-2;
- Dr. Aaron Striegel – an independent expert witness in computer networking who opined regarding apportionment and the top-level infringing functions of the accused products. Tr. 1337:19-23;
- Mr. Lance Gunderson – an independent expert witness in patent damages who opined regarding damages and a reasonable royalty. Tr. 1441:2-14;
- Mr. James Malackowski – an independent expert witness in business, intellectual property valuation and patent licensing who opined regarding

the impact of the asserted infringement on Centripetal and damages going forward. Tr. 1573:14-19.

12. Centripetal, additionally, presented testimony from Cisco employees by video deposition including:

- Mr. Saravanan Radhakrishnan;
- Mr. Rajagopal Venkatraman;
- Dr. David McGrew;
- Mr. Sunil Amin;
- Mr. Sandeep Agrawal.

13. Cisco, in its case in chief, called a variety of live fact and expert witnesses including:

- Mr. Michael Scheck – Senior Director of Incident Command at Cisco. Tr. 165:23-24;
- Dr. David McGrew – Cisco Fellow who was responsible for leading a research and development project at Cisco that became the Encrypted Traffic Analytics solution. Tr. 1759:10-12;
- Dr. Douglas Schmidt – an independent expert witness in networking and network security who opined regarding non-infringement, invalidity, and damages of the ‘856 Patent. Tr. 1813:4;
- Mr. Daniel Llewallyn – Software Engineer for Cisco who previously worked at Lancope. Tr. 2141:19;

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