
Expensive Product's Manual with Few Sales Still Printed Publication

Cisco Sys., Inc. v. Centripetal Networks, Inc., IPR2018-01436, Paper 40, 2020 WL 402817 (P.T.A.B. Jan. 23, 2020)

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After finding that a user manual was publicly accessible (and thus a printed publication), a panel of the Patent Trial and Appeal Board (“PTAB”) relied on a combination of the teachings in that user manual and the knowledge of a person of ordinary skill in the art (“POSA”) to invalidate Centripetal Network’s U.S. Patent No. 9,124,552 covering network security.

Understanding case law as to what qualifies as a printed publication before the PTAB is essential to practitioners and clients in post-grant proceedings, as such clarification provides guidance to what evidence can be relied upon and submitted in those proceedings.

In qualifying the user manual as a printed publication, the Board concentrated on the evidence that the user manual (which was on CD-ROM disks) was publicly accessible via distribution with public sales of the associated products from Sourcefire 3D System (“Sourcefire”). Centripetal did not dispute evidence that 586 copies of Sourcefire products were sold over a two-year period to customers interested in network security products and that a user manual, without any confidentiality restrictions, accompanied each product. The Board relied on these facts to reject all Centripetal’s arguments, as discussed in further detail below.

First, the dissemination of the user manual was not restricted by any confidentiality obligations on its purchasers. Contrarily, the user manual included a notice that a user “may use, print out, save on a retrieval system, and otherwise copy and distribute the Documentation solely for non-commercial use.”

Second, the 586 copies sold surpassed the number of disclosures recognized under the pertinent dissemination law for printed publication. Additionally, these actual purchases of Sourcefire products and Sourcefire’s regular advertisement of its products (all of which were accompanied by user manuals) supported a finding of public dissemination to customers interested in network security products, which included POSAs.

Third, although the cost of the Sourcefire product ranged from \$1,385 to \$32,734, such a cost did not avert almost 600 customers from receiving the user manual by actually purchasing the Sourcefire products. Further, Centripetal did not offer any evidence that a POSA would not purchase the Sourcefire product due to the cost. Even so, the Board acknowledged that “public accessibility by actual distribution of a reference is not limited to free-of-charge references; it includes commercial distribution.”¹

Finally, and contrary to Centripetal’s assertion, indexing of the printed publication is not necessary if the printed publication was sufficiently disseminated at the time of its publication. The appropriate inquiry is “whether the *distribution* of the materials to certain groups of people was sufficient to for public accessibility.”² Because the user manual was advertised as being included with the purchase of a Sourcefire product, a POSA would have known how to find the manual and almost 600 actually did.

¹ *Cisco Sys., Inc. v. Centripetal Networks, Inc.*, IPR2018-01436, Paper 40, at *26-27 (P.T.A.B. Jan. 23, 2020).

² *Id.* at 29.