

No. 17-708

---

---

**In the Supreme Court of the United States**

KIP CR P1 LP, SUCCESSION IN TITLE TO  
CROSSROADS SYSTEMS, INC.,  
*Petitioner,*

v.

CISCO SYSTEMS, INC., QUANTUM CORP., ORACLE CORPORATION,  
DOT HILL SYSTEMS CORPORATION,  
*Respondents.*

*On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Federal Circuit*

---

**BRIEF IN OPPOSITION OF RESPONDENT  
CISCO SYSTEMS, INC.**

---

Debra J. McComas  
*Counsel of Record*  
David McCombs  
Andrew W. Guthrie  
HAYNES AND BOONE, LLP  
2323 Victory Avenue  
Suite 700  
Dallas, Texas 75219-7673  
(214) 651-5000  
debbie.mccomas@haynesboone.com  
david.mccombs@haynesboone.com  
andrew.guthrie@haynesboone.com

*Attorneys for Respondent  
Cisco Systems, Inc.*

**QUESTION PRESENTED**

1. Whether *inter partes* review—an adversarial process used by the Patent and Trademark Office to analyze the validity of existing patents—violates the Constitution by extinguishing private property rights through a non-Article III forum without a jury.

**RULE 29.6 CORPORATE  
DISCLOSURE STATEMENT**

Respondent Cisco Systems, Inc. has no parent corporation and no publicly held company owns 10% or more of its stock.

**TABLE OF CONTENTS**

QUESTION PRESENTED ..... i

RULE 29.6 CORPORATE DISCLOSURE  
STATEMENT ..... ii

TABLE OF CONTENTS ..... iii

TABLE OF AUTHORITIES ..... iv

BRIEF IN OPPOSITION ..... 1

COUNTER-STATEMENT OF THE CASE ..... 1

REASONS FOR DENYING THE PETITION ..... 3

CONCLUSION ..... 4

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Case</b>	
<i>Oil States Energy Servs., LLC v. Greene’s Energy Grp., LLC, No. 16-712 (U.S. cert. granted June 12, 2017)</i> .....	2, 3
<b>Statute</b>	
35 U.S.C. § 311 <i>et seq.</i> .....	2

## BRIEF IN OPPOSITION

Respondent Cisco Systems, Inc. (“Cisco”) submits this Brief in Opposition to the Petition for a Writ of Certiorari submitted by Petitioner KIP CR P1 LP, purported successor-in-title to Crossroads Systems, Inc. (collectively, “Petitioner” or “Crossroads”).<sup>1</sup>

### COUNTER-STATEMENT OF THE CASE

This case arises from consolidated *inter partes* review proceedings in which the Patent Trial and Appeal Board (the “PTAB”) found invalid three of Crossroads’s patents, a decision that the Federal Circuit affirmed.

The technology at issue below is not relevant to the narrow questions before this Court. Nonetheless, for purposes of background, the invalidated patents purport to describe a “storage router” that stores and routes storage data between workstations. (*See App. 138a.*) In a failed attempt to distinguish the invention from the crowded prior art in the field of the technology, Crossroads has emphasized one element in the patent claims: “maps between devices.” (*App. 145a, 146a.*)

---

<sup>1</sup> KIP CR P1 LP was introduced as the “successor-in-title” to Crossroads Systems, Inc. for the first time in the Petition for a Writ of Certiorari. Cisco has not had any opportunity to verify this claimed assignment. For purposes of this Brief in Opposition—and for the sake of simplicity—Cisco will treat these entities as a single, collective patent owner. However, Cisco reserves the right to challenge the ownership claims of KIP CR P1 LP in any future proceedings.

After Crossroads sued Cisco and the other respondents for patent infringement in federal district court, Cisco and the other respondents challenged the validity of the patents in the Patent and Trademark Office, under the *inter partes* review (“IPR”) procedure offered by the America Invents Act. *See* 35 U.S.C. § 311 *et seq.* The PTAB ultimately found unpatentable the challenged claims of all three patents. (App. 1a-49a, 50a-98a, 99a-135a.)

Crossroads appealed these findings to the Federal Circuit, and on June 6, 2017, the Federal Circuit issued an opinion and judgment affirming the PTAB’s rulings. (App. 136a-152a.) Six days later, this Court granted certiorari to determine the constitutionality of IPRs in *Oil States Energy Services, LLC v. Greene’s Energy Group, LLC*, No. 16-712 (U.S. *cert. granted* June 12, 2017) (“*Oil States*”).

Crossroads filed a petition for rehearing in the Federal Circuit on July 6, 2017, and argued for the first time that IPRs should be declared unconstitutional for the reasons discussed in the *Oil States* petition. *See* Petition for Rehearing *En Banc* of Appellant Crossroads Systems, Inc. at 2, *Crossroads Systems, Inc. v. Cisco Systems, Inc., et al.*, Nos. 16-2017, 16-2026, 16-2027 (Fed. Cir. July 6, 2017). On August 8, 2017, the Federal Circuit denied this request without comment and without requesting a response. (App. 153a.)

## REASONS FOR DENYING THE PETITION

This petition should be denied because *inter partes* review is constitutional for all the reasons stated in the *Brief of Intel, Applied Materials, Cisco, Google, LG Electronics, ON Semiconductor, Samsung, and Xerox as Amici Curiae in Support of Respondents, Oil States Energy Services, LLC v. Greene's Energy Group, LLC* No. 16-712 (U.S. October 30, 2017.). Cisco hereby reiterates its request for the Court in *Oil States* to affirm the constitutionality of IPRs.

In the event of such a ruling, this petition offers nothing of substance and should be denied for that reason alone. Crossroads makes no attempt to disguise the tagalong nature of its petition. For example, the question presented is a word-for-word repeat of the issue on which the Court granted review in *Oil States*. (Pet. i.) Further, the body of Crossroads's argument is nothing more than excerpts and block quotes from the petition in *Oil States*. (Pet. 7-9.) And finally, in summarizing its reasons to grant review, Crossroads offers only that "[t]he constitutionality issue raised by *Oil States* is . . . the same here." (Pet. 9.)

Simply put, Crossroads's petition offers no additional substance on the constitutional question at issue in *Oil States*. So a ruling that affirms the constitutionality of the IPR procedure in *Oil States* resolves all the issues in this petition against Crossroads—and the petition must be denied. In fact, Crossroads does not appear to seek review in that circumstance. (See Pet. 10.)

In the event the Court goes the other way in *Oil States* and rules that IPRs are unconstitutional, Cisco

reserves all rights to argue on remand that Crossroads has forfeited its right to challenge the constitutionality of the IPR in this case.

**CONCLUSION**

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Dated: March 5, 2018.

Respectfully Submitted,

Debra J. McComas

*Counsel of Record*

David McCombs

Andrew W. Guthrie

HAYNES AND BOONE, LLP

2323 Victory Avenue, Suite 700

Dallas, Texas 75219-7673

(214) 651-5000

debbie.mccomas@haynesboone.com

david.mccombs@haynesboone.com

andrew.guthrie@haynesboone.com

*Attorneys for Respondent*

*Cisco Systems, Inc.*