No. 26-392

IN THE

Supreme Court of the United States

CENTRIPETAL NETWORKS, LLC,
Petitioner,

v.

CISCO SYSTEMS, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly affirmed a judgment of patent non-infringement after a bench trial, where the district court adopted a construction of a claim term that the defendant proposed through written briefing and at oral argument, and the plaintiff identified no cognizable prejudice from the construction's adoption.

CORPORATE DISCLOSURE STATEMENT

Respondent Cisco Systems, Inc. has no parent corporation. To the best of Cisco's knowledge and belief and based on public filings with the Securities and Exchange Commission, as of October 30, 2026, no publicly held corporation owns 10% or more of Cisco's stock.

DIRECTLY RELATED PROCEEDINGS

The following cases are related to this proceeding under Rule 14.1(b)(iii):

Centripetal Networks, LLC v. *Cisco Systems, Inc.*, No. 2024-2097 (Fed. Cir. Apr. 29, 2026)

Centripetal Networks, Inc. v. *Cisco Systems, Inc.*, No. 22-246 (U.S. Dec. 5, 2022)

Centripetal Networks, Inc. v. *Cisco Systems, Inc.*, No. 2021-1888 (Fed. Cir. June 23, 2022)

Centripetal Networks, LLC v. *Cisco Systems, Inc.*, No. 2:18-cv-00094 (E.D. Va. Dec. 12, 2023) (entering partial judgment pursuant to Rule 54(b))

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BRIEF IN OPPOSITION

INTRODUCTION

Centripetal's petition—its second in this case—contains no question worthy of this Court's review. Indeed, the question Centripetal claims to present depends on assertions—namely that Centripetal lacked "notice" and a "meaningful opportunity to be heard" (Pet. i)—that are not only factbound and case-specific, but are actually contradicted by the decisions below. As the court of appeals found, "Centripetal had adequate notice of Cisco's claim construction positions with respect to" U.S. Patent No. 9,686,193 (the "'193 patent") through Cisco's filings in connection with the first trial and during the remand hearing. Pet. App. 16a-17a. Accordingly, Cisco "consistently put [Centripetal] on notice of its interpretation of

the asserted claims." Pet. App. 17a. The district court made the same findings. Pet. App. 36a-37a.

Thus, in order to even reach Centripetal's question presented, this Court would need to reconsider the lower courts' determination that Centripetal had ample notice of the proposed claim construction that was eventually adopted. But that is at most a request for case-specific error correction, which this Court should decline. And there was no error in any event, because the record—with which Centripetal does not engage—shows that Cisco made its understanding of the claims known; the district court asked Centripetal about it; and Centripetal's counsel addressed it (ineffectively). There was no "unfairness" in this procedure (Pet. App. 17a), since Centripetal understood Cisco's arguments, had every opportunity to make its views known, and did so. Centripetal's failure to convince the lower courts is not a reason for this Court's review.

Centripetal's half-hearted argument about U.S. Patent No. 9,203,806 (the "'806 patent") is likewise flawed. Even Centripetal does not assert that it lacked notice or an opportunity to be heard regarding Cisco's understanding of the '806 patent, meaning that Centripetal's proposed question (Pet. i) is not even *arguably* presented as to the '806 patent. Moreover, the Federal Circuit found that Centripetal forfeited the claim construction it advanced on appeal by failing to present it to the district court. Pet. App. 18a-19a. Centripetal could not point the Federal Circuit to any filing where Centripetal preserved its argument, Pet.App.19a, and its petition to this Court does not either. Thus, to even address Centripetal's arguments regarding the '806 patent, the Court would need to reverse a well-grounded forfeiture finding—a quintessentially case-specific determination

that Centripetal has given this Court no basis to reconsider.

Even were the Court to reach Centripetal's question, it does not warrant review. Centripetal concedes that the Federal Circuit already requires notice and opportunity to be heard regarding claim construction. Pet. 20. To the extent Centripetal believes the Federal Circuit has engaged in inconsistent approaches, it could have sought rehearing en banc, which it did not. And it does not assert any inconsistency with the decisions of other circuits or of this Court. The cases it cites mostly turn on whether a claim construction after a *jury verdict* was inherent in jury instructions, which is inapposite here, as there was no jury, no jury verdict, and no jury instructions. When infringement is decided by the bench, as here, neither this Court nor the Federal Circuit has suggested that the judge must resolve all claim construction disputes before trial. As long as the patentee has notice of the challenger's contentions, which Centripetal plainly did, no principle forbids resolving claim construction disputes after trial.

A further reason for denial is that Centripetal has not shown that the case would have turned out any differently had the district court announced its claim construction earlier. Centripetal conceded below that it would lose under the court's construction of the '193 patent claims. Pet. App. 16a. And on remand, Centripetal declined to recall any witnesses, calling that "unnecessary and wasteful." Pet. App. 27a. Centripetal's unelaborated complaints that it would have shown that a particular agency filing "did not constitute a clear and unmistakable surrender" and presented additional arguments regarding "the patent specification and a correct application of the claim-differentiation doctrine" (Pet. 27) are forfeited. Centripetal did not mention such

arguments either in its motion for reconsideration in the district court or its appellate briefing in the Federal Circuit. Accordingly, Centripetal has given this Court no reason to believe that it could have proven infringement even under the procedure that it wrongly believes was required.

The petition for a writ of certiorari should be denied.

STATEMENT

A. First District Court Proceeding And Appeal

Respondent Cisco is a leading U.S. innovator in network technology and develops critical infrastructure that powers the modern Internet. Decades ago, it developed the three types of products at issue here—switches, routers, and firewalls. Petitioner Centripetal was founded in 2009 and originally was a Cisco customer. Pet. App. 196a; C.A.J.A.5805-5806; C.A.J.A.5934-5935(14:24-22:15). Centripetal initially sought investment from or partnership with Cisco, which declined.

Centripetal then turned to litigation. Centripetal sued Cisco for infringement of numerous patents, including the '193 and '806 patents. Pet. App. 2a. The case was initially assigned to Judge Henry Coke Morgan, who held a 22-day bench trial. Pet. App. 26a, 51a. Both before and during trial, Cisco repeatedly presented the claim-construction arguments at issue here.

For the '193 patent, Cisco consistently argued that the asserted claims require filtering data packets transmitted over the Internet in two stages—first by source and destination, and then by particular type of data transfer. As Cisco explained, its accused products do not infringe because they filter only based on "the destination of the packet," which corresponds to the '193 patent's first stage only. Dist. Ct. Dkt. 474 at 22(¶¶77-78);

C.A.J.A.17865-17866(¶¶80-81, 86-87); *see also* C.A.J.A.17380-17381(¶¶440, 442-443); *see also* C.A.J.A.9813. Cisco and its experts made the same argument at trial, explaining that the claim language, patent specification, expert testimony, and Centripetal's own arguments showed that the patent claims require filtering based on both source and destination and the "particular type of data transfer." C.A.J.A. 3359(2355:1-12); C.A.J.A.3366(2362:9-25); C.A.J.A.3374-3376(2370:11-2372:25); C.A.J.A.3380-3381(2376:6-2377:1); Dist. Ct. Dkt. 549 at 3275:4-3277:13; C.A.J.A.17865-17866. Cisco's closing argument emphasized this "fundamental[] … dispute" between the parties over "claim scope" (Dist. Ct. Dkt. 549 at 3274:10-21), and Centripetal's counsel also referenced this dispute over claim scope. Dist. Ct. Dkt. 549 at 3281:13-3282:2.

Cisco also relied on Centripetal's statements in a brief to the Patent Trial and Appeal Board ("PTAB") during a parallel *inter partes* review ("IPR") proceeding, in which Centripetal defended the '193 patent's validity by representing that it covered the two-stage filtering process of: "(1) detecting communications between … a first and second network … and (2) using an operator to determine whether the rule allows for the 'particular type of data transfer.'" C.A.J.A.17866(¶83) (citing C.A.J.A.19013); *see also* C.A.J.A.3429-3431(2424:21-2426:21); Dist. Ct. Dkt. 549 at 3274:10-3277:13; C.A.J.A.17865-17866(¶¶82-83); C.A.J.A.21286(304:15-21); C.A.J.A.3379-3380(2375:1-2376:5); C.A.J.A.3359(2355:14-22); C.A.J.A.3366(2362:22-25).

Centripetal never asked the district court for a construction of the "particular type of data transfer" limitation. It instead agreed that the term should carry its plain and ordinary meaning. C.A.J.A.22130. And as the court of appeals noted, Centripetal "embraced"—

including in its IPR brief—the reading of the '193 patent that it now challenges. Pet.App.38a; *see also* C.A.J.A.10997; C.A.J.A.11191(¶123); C.A.J.A.17082-17083(¶¶117, 122).

For the '806 patent, Cisco argued the relevant claim term ("responsive to being signaled") requires a cause-and-effect relationship between a particular signal and the resulting activity (ceasing processing and caching packets). C.A.J.A.127(11:39-44, 12:51-55); *e.g.*, Dist. Ct. Dkt. 474 at 31(¶112). As Cisco and its witnesses explained, Centripetal wrongly sought to map these limitations to actions that Cisco's accused products take regardless of any particular signal, which are thus not "responsive" to that signal. *E.g.*, Dist. Ct. Dkt. 424 at 141(¶¶538-539); Dist. Ct. Dkt. 549 at 3292:7-3295:4; C.A.J.A.3624(2618:1-10); C.A.J.A.3568-3571(2562:8-2565:18); C.A.J.A.5867.

As with the '193 patent, Centripetal never sought a construction of the "responsive to being signaled" limitation of the '806 patent. And Centripetal did not argue to the district court that the '806 patent claims "require causation of the sequence as a unit," nor did Centripetal ever argue that the rule-swap signal need not be the "but-for cause" of "each component part" of the claimed sequence. Pet. App. 18a-19a.

After the close of evidence but before issuing any merits opinion, Judge Morgan notified the parties that his spouse owned 100 shares of Cisco stock. Pet. App. 141a. Judge Morgan denied Cisco's motion for recusal, and then ruled against Cisco on the merits, entering a judgment that, including interest and ongoing royalties, exceeded $2.75 billion. Pet. App. 2a-3a, 390a.

The court of appeals held that Judge Morgan was disqualified under 28 U.S.C. § 455(b), vacated the

judgment, ordered that the case "be assigned to a new judge … pursuant to Rule 63," and remanded "for further proceedings before [the] newly appointed judge, who shall decide the case without regard for the vacated opinions and orders." Pet. App. 3a, 168a.

This Court denied Centripetal's first petition for certiorari. 143 S. Ct. 487 (2022) (No. 22-246).

B. Remand And Rule 63 Proceeding

The case was reassigned to Judge Hanes, who allowed the parties substantial leeway to shape additional proceedings under Federal Rule of Civil Procedure 63. Centripetal declined the opportunity to reopen the record and recall live witnesses, Pet. App. 66a, calling it "unnecessary and wasteful." Pet. App. 27a. Both parties filed pre-hearing briefs and presented extensive technology tutorials and oral arguments over three days. Centripetal acknowledged that the district court could continue assessing the "interpretation of the claim language … throughout the trial," as Judge Morgan had done during the first trial. Dist. Ct. Dkt. 753 at 322:23-323:19; Dist. Ct. Dkt. 754 at 433:23-25.

Cisco consistently re-urged its position that the '193 patent claims "require[] a specific *two-stage* filter for packets" in which the first stage "determine[s] the *origin and destination* of the packets (where the packets came from and where they are going)." C.A.J.A.19440; C.A.J.A.19450-19451 (citing C.A.J.A.164(14:5-15)) (emphases in original). The second stage blocks "only a subset of the determined first-to-second-network-destined packets, namely those … that are also determined to be 'associated with the particular type of data transfer.'" Dist. Ct. Dkt. 737-1 at 18-27(¶¶45-64); C.A.J.A.19451-19452 (citing C.A.J.A.164(14:16-19); C.A.J.A.158(2:19-54); C.A.J.A.161(8:39-65)); Dist. Ct. Dkt. 753 at 297:8-

303:19, 307:5-309:6, 310:8-15, 313:7-314:14. Cisco also referred to Centripetal's IPR brief as confirming Cisco's understanding of the "particular type of data transfer" limitation. Dist. Ct. Dkt. 753 at 301:12-304:21 (quoting C.A.J.A.19013, C.A.J.A.19023).

Centripetal had ample opportunity to respond (and did respond) to Cisco's position regarding the meaning of "particular type of data transfer." Centripetal's prehearing submission argued that "[c]ontrary to Cisco's position, the Asserted Claims do not require inspection of the payload of a packet," but "[i]nstead … require the enforcement of a packet filtering rule that inspects a packet and applies an operator." Dist. Ct. Dkt. 724 at 33; *see also* Dist. Ct. Dkt. 475 at 3(¶13). At the Rule 63 hearing, Centripetal addressed Cisco's position at length. C.A.J.A.21245(263:20-25); C.A.J.A.21237-21238(255:17-256:9); Dist. Ct. Dkt. 753 at 320:22-321:17, 237:3-239:12, 245:16-246:25; C.A.J.A.21230-21233(248:6-250:13).

Judge Hanes repeatedly asked Centripetal's counsel to address the meaning of "particular type of data transfer." *E.g.*, Dist. Ct. Dkt. 753 at 247:18-248:24. For example, Judge Hanes asked whether there was any testimony regarding the meaning of "particular type of data transfer," and Centripetal responded by referring to its expert's testimony at trial. C.A.J.A.21233-21234(251:14-252:18); Dist. Ct. Dkt. 753 at 258:19-259:8. Judge Hanes also asked how to "reconcile" Centripetal's proposed construction with the '193 patent specification, and Centripetal's counsel responded. C.A.J.A.21234-21238(252:19-256:9).

Centripetal was likewise on notice of Cisco's position regarding the '806 patent, namely that actions that occur regardless of whether or not a signal is sent cannot be "responsive to" that signal. *See, e.g.*, Dist. Ct. Dkt. 698

at 25-29; Dist. Ct. Dkt. 729 at 54-72(¶¶115-149), 75(¶157), 78-84(¶¶164-174), 92-94(¶¶197-209); C.A.J.A.21354-21355(372:2-373:4); C.A.J.A.21358-21359(376:14-377:15); Dist. Ct. Dkt. 753 at 389:11-391:24, 395:16-396:14. Centripetal did not raise any arguments regarding the construction of "responsive to being signaled." Judge Hanes directly asked Centripetal to provide its "position on [Cisco's] 'responsive to' argument," and Centripetal's counsel conclusorily asserted that "in response to that signal, the processor is going to ensure that no packets are being processed and that they're in cache." Dist. Ct. Dkt. 753 at 414:20-24-416:1; *see id.* 345:12-347:1, 358:16-360:3.

In a 61-page remand opinion, Judge Hanes found that Centripetal "failed to meet its burden to establish infringement" of the '193 and '806 patents and entered a partial final judgment under Rule 54(b). Pet. App. 58a-59a, 138a.[1]

Judge Hanes stated that the '193 patent's second stage requires "filtration of a subset of packets sent between computers in two different networks," and that the claimed rule "drop some, but not all, packets sent between two different network destinations," which was a "functionality … not present in" Cisco's accused products. Pet. App. 89a, 94a. The district court did not invoke the prosecution history disclaimer doctrine.

Regarding the '806 patent, Judge Hanes explained that the claims require the "ceas[ing] processing" and "cach[ing]" of packets to occur "responsive to being signaled," and that Centripetal failed to establish "this causal relationship." Pet. App. 105a-107a. The court

[1] Judge Hanes also found non-infringement of U.S. Patent No. 9,560,176, which Centripetal does not raise in its petition.

rejected Centripetal's argument that a mere temporal sequence between a rule swap signal and the cease/cache functions could show that the latter were "responsive to" the former. Pet. App. 107a-108a. Further, the court found that the "cease processing" limitation of the '806 patent requires the system to stop processing packets entirely, something Cisco's accused products do not do. Pet. App. 101a, 103a-104a, 112a-113a.

Centripetal moved for reconsideration or, in the alternative, for a new trial. Pet. App. 23a. Centripetal argued that the court adopted a purportedly new construction of the '193 patent. C.A.J.A.22129-22131. Although Centripetal's motion also raised arguments regarding the '806 patent, Centripetal never claimed that the district court had changed any construction of "responsive to being signaled." Pet. App. 28.

The district court denied Centripetal's motion for reconsideration. Pet. App. 23a. Regarding the '193 patent, the court rejected Centripetal's claim that it lacked notice of the court's interpretation of "particular type of data transfer." Pet. App. 37a. Citing numerous passages from the trial and the Rule 63 hearing, the court found that "Cisco has consistently taken the position, from the 2020 trial through the Rule 63 proceedings, that 'particular type of data transfer' refers to the method of transfer." Pet. App. 37a (collecting citations). The court explained that, although Centripetal "had ample opportunity to raise this issue," it raised its claim construction argument for the first time post-judgment and had never sought a claim construction prior to the entry of judgment. Pet. App. 29a, 37a. Thus, Centripetal had waived any construction other than "the plain and ordinary meaning of the term." Pet. App. 29a. Accordingly, the court rejected Centripetal's belated request to reopen the record. Pet. App. 38a.

The district court also rejected Centripetal's assertion that it had construed the claims to "*requir[e]* filtration of packets from a single computer in a first network." Pet. App. 32a n.3 (emphasis the court's). The court offered "further clarification," however, because it had not expressly discussed a situation in which the packets originated from multiple computers in the first network. Pet. App. 32a-36a. The reconsideration order clarified that "the plain and ordinary meaning of 'particular type of data transfer' refers to the specific technique, or method, associated with the data transmission" based on the specification, technical dictionaries, and Centripetal's IPR brief. Pet. App. 34a-36a.

Finally, the district court rejected Centripetal's claim construction argument for the "cease processing" term in the '806 patent. Pet. App. 45a-46a, 113a-115a.

C. Court Of Appeals Decision

During oral argument in the court of appeals, Centripetal conceded that it would lose if the '193 patent claims require a "two-stage filter[ing]." C.A. Oral Arg. 7:00-7:20. Centripetal also agreed that Cisco had "from the beginning" made the same claim construction argument for the '193 patent that is reflected in Judge Hanes' reconsideration opinion. C.A. Oral Arg. 12:54-13:50. Regarding the '806 patent, when asked where Centripetal had preserved its arguments regarding the meaning of "responsive to," Centripetal's counsel could not identify any citation to the record. C.A. Oral Arg. 33:08-34:12.

The Federal Circuit affirmed the district court's judgment, holding (as relevant here) that (1) "Cisco's accused products [for the '193 patent] only filter by source and destination" and do not "satisf[y] filtering at the second stage by 'particular type of data transfer,'" and (2) Cisco's accused products for the '806 patent "cease

processing packets in the normal course of processing, and not in response to a signal." Pet. App. 16a, 19a.

The court of appeals concluded that Cisco "consistently put [Centripetal] on notice of its" claim construction position with respect to the '193 patent through Cisco's "post-trial proposed findings of fact and conclusions of law," "trial brief[,] and at the Rule 63 hearing." Pet. App. 17a (citing C.A.J.A.17865-17866; C.A.J.A.19450-19454; C.A.J.A.21283). The court of appeals also recognized that "statements made by a patent owner [such as Centripetal] during an IPR proceeding … can be considered for claim construction," particularly here, where Centripetal made "representations about claim scope to avoid prior art." Pet. App. 15a (quoting *Aylus Networks, Inc.* v. *Apple Inc.*, 856 F.3d 1353, 1362 (Fed. Cir. 2017)). The court observed that Centripetal's "statements to the [PTAB] make clear that the asserted claims of the '193 patent disclose a two-stage filtering process and that the first stage involves filtering based on source and destination." Pet. App. 15a. The court of appeals did not rely on, or even mention, the doctrine of prosecution history disclaimer, nor did Centripetal raise any argument based on it.

As for the '806 patent, the court of appeals concluded that the "responsive to being signaled" limitation requires a "causal relationship" between the rule-swap signal and the function of ceasing processing of packets, which Cisco's accused products lack. Pet. App. 21a, 41a-42a. The court found that Centripetal forfeited both its challenge to that construction as well as its own proposed construction to "requir[e] causation of the sequence as a unit." Pet. App. 18a-19a. "Nothing … indicates that Centripetal fairly presented the district court with this claim construction or argued that the plain and

ordinary meaning leads to this interpretation of the claim." Pet. App. 18a-19a.

Despite requesting and receiving an extension of time to petition for rehearing or rehearing en banc, Centripetal filed no such petition. C.A. Dkt. 64, 65.

REASONS FOR DENYING THE PETITION

I. CONTRARY TO ITS QUESTION PRESENTED, CENTRIPETAL HAD NOTICE AND AN OPPORTUNITY TO BE HEARD REGARDING THE CLAIM CONSTRUCTIONS ULTIMATELY ADOPTED

Centripetal asks whether a court may adopt a "new, dispositive, materially different claim construction" after the record has closed "without providing notice" and "a meaningful opportunity to be heard." Pet. i. This case does not present that question. Both courts below found that Centripetal had notice of the district court's ultimate construction of the '193 patent, Pet. App. 16a-17a, 37a, and the record shows that Centripetal was repeatedly heard on it, Pet. App. 91a-92a; *supra* pp. 4-5, 7-8, 10. As for the '806 patent, Centripetal does not even claim a lack of notice, and the Federal Circuit held that Centripetal forfeited the construction it now advances. Pet. App. 18a-19a. Centripetal's question could therefore be reached only by overturning record-specific determinations of both courts below—factbound error correction this Court does not typically undertake. *See* Sup. Ct. R. 10.[2]

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[2] Centripetal repeatedly describes Judge Hanes's decision as an "about-face" that "reversed Judge Morgan's earlier ruling," "overrul[ed] the willful infringement finding," and turned a "$2.6-billion willful infringement judgment into a goose egg." Pet. 10, 14, 25, 31.

A. Centripetal Had Notice Of, And Was Heard Regarding, The '193 Patent Claim Construction

The court of appeals held that "Centripetal had adequate notice of Cisco's claim construction positions with respect to the '193 patent," because Cisco "consistently put [Centripetal] on notice of its interpretation of the asserted claims" in its 2020 post-trial submission, in its 2023 trial brief, and at the Rule 63 hearing. Pet. App. 16a-17a (citing C.A.J.A.17865-17866; C.A.J.A.19450-19454; C.A.J.A.21283). The district court likewise found that "Cisco has consistently taken the position, from the 2020 trial through the Rule 63 proceedings, that 'particular type of data transfer' refers to the method of the transfer," and that Centripetal "has had ample opportunity to raise this issue." Pet. App. 37a.

The record bears those findings out at every stage. *See supra* pp. 4-5, 7-8, 10. Before the first trial, Cisco

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Those characterizations are wrong. The Federal Circuit—not Judge Hanes—vacated Judge Morgan's opinions and judgment and directed the new judge to "decide the case without regard for the vacated opinions and orders." Pet. App. 168a. This Court denied Centripetal's prior petition for certiorari, and Centripetal's current petition does not challenge the vacatur of Judge Morgan's judgment. That a successor judge—after certifying familiarity with the voluminous record, C.A.J.A.20977, presiding over a three-day hearing, Pet.App.9a, and deciding the case independently—reached a different result is what vacatur contemplates. Indeed, as Cisco showed in the first appeal, Judge Morgan's vacated merits decision was erroneous on multiple grounds. Cisco 2021 C.A. Br. 16-64.

argued that the claimed rule must drop packets "associated with a particular type of data transfer (e.g., HTTP PUT/POST, FTP, RTP, etc.)." C.A.J.A.9813; *see* C.A.J.A.17380-17381. In closing, Cisco argued that the second stage of the claimed two-stage process determines "the specific method or type of communication," "e.g., file read, file write," such that the claimed rules "only block these packets to the given destination that have the particular type of data transfer." Dist. Ct. Dkt. 549 at 3275:18-3276:14. Cisco pressed the same point in its post-trial submission, C.A.J.A.17865-17866, in the first appeal, Cisco 2021 C.A. Br. 45-50, and again on remand, *supra* p. 7.

Centripetal understood the dispute. At the first trial, its counsel argued that "as anticipated, there's a lot of talk about changing the claim language," and also that the claim does not require a rule "configured to inspect for a particular type of data transfer or to inspect the payload." Dist. Ct. Dkt. 549 at 3281:13-3282:2. At other times, Centripetal "embraced" Cisco's understanding, Pet. App. 38a, including by offering "an outbound HyperText Transfer Protocol (HTTP) POST request" as an example of "a particular type of data transfer," C.A.J.A.17082-17083(¶¶117, 122). And in the court of appeals, Centripetal conceded that Cisco's HTTP-method examples of "particular type[s] of data transfer" had "never been disputed." Centripetal C.A. Reply 12.

Centripetal was also heard on the claim construction dispute on remand. At the Rule 63 hearing, Judge Hanes told Centripetal's counsel that Cisco's position—that Cisco's accused functionality filters based on "where you can go," not "a particular type of data transfer"—was "part of the primary issue here and what I want you to try to explain to me." C.A.J.A.21230(248:6-24). She asked what the testimony showed about "what that

clause of words means or how it should be interpreted," C.A.J.A.21233-21234(251:14-252:2), and asked Centripetal's counsel to "reconcile" his reading with the specification's discussion of "HTTP GET as being a particular type of data transfer," C.A.J.A.21234(252:19-23). Counsel answered that the phrase "doesn't mean looking at the content of the data or in the payload," but "where is that transfer going." C.A.J.A.21245(263:20-25). In rebuttal, Centripetal's counsel argued that the claims "do not require you to look at the PUT or the GET or at the payload," and addressed Cisco's reliance on Centripetal's IPR brief. Dist. Ct. Dkt. 753 at 321:5-322:22. In its opinion, the district court quoted Centripetal's arguments and explained why "Centripetal's contrary interpretation … at the Rule 63 hearing … [wa]s unavailing." Pet. App. 91a-92a (quoting, *e.g.*, C.A.J.A.21220(238:5-7), C.A.J.A.21242(260:5-9)). A party whose arguments are quoted and rejected has been heard.

Centripetal was heard again after judgment. Its reconsideration motion challenged the court's reading of "particular type of data transfer." C.A.J.A.22126-22135. Cisco's opposition explained that the claims require filtering by "the specific method or type of communication," Dist. Ct. Dkt. 800 at 8; and Centripetal replied, Dist. Ct. Dkt. 808. The court denied the motion with detailed reasoning, including rejecting Centripetal's claim of surprise. Pet.App.36a-38a. That is not a construction adopted "without permitting supplemental briefing." Pet. i.

Centripetal takes issue with the Federal Circuit's notice finding only briefly, near the end of its petition. Pet. 26-28. Of course, even if Centripetal's disagreement with the notice finding had merit, it would not warrant certiorari: whether a particular litigant had notice of a particular argument on a particular record is a factbound

question unworthy of this Court's review. In any event, Centripetal's arguments fail.

First, Centripetal says it relied on the parties' "acceptance of the plain-meaning construction." Pet. 26. But agreeing that a term carries its plain meaning does not resolve a dispute about what that meaning is, and "[w]hen the parties present a fundamental dispute regarding the scope of a claim term, it is the court's duty to resolve it." *O2 Micro Int'l Ltd.* v. *Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). Judge Hanes did exactly that. Pet.App.29a, 36a-38a, 88a-91a. Centripetal's professed expectation that she would apply "the same plain-meaning construction applied by Judge Morgan" (Pet. 26) fails, because Judge Morgan never construed "particular type of data transfer," Centripetal never asked him to, and his merits opinion was vacated. *See supra* pp. 5-6.

Second, Centripetal complains that the Federal Circuit relied on 2023 IPR documents filed with the court and closing arguments that came "far too late." Pet. 27. But the IPR documents had been made available to the court in their entirety during the 2020 trial, *infra* p. 26, and the Rule 63 proceeding was decided based on a record Centripetal itself called sufficient, such that recalling witnesses would be "unnecessary and wasteful." Pet. App. 27a. Centripetal had Cisco's trial brief a month before the Rule 63 hearing and six months before Judge Hanes's decision—and complained at the hearing that the brief was "bringing up claim construction," Dist. Ct. Dkt. 754 at 432:22-433:2, thus confirming notice. Centripetal's petition also ignores Cisco's 2020 post-trial submission referenced by the Federal Circuit, Pet. App. 17a (citing C.A.J.A.17865-17866), as well as Cisco's consistent arguments before and during the first trial and

during the first appeal. *Supra* p. 4-6; Cisco 2021 C.A. Br. 45-50.

Third, Centripetal cites its oral statement that it "would like to recall some witnesses" if a construction went against it. Pet. 26-27. But Centripetal never sought a construction, and "[i]t is the parties' obligation to raise a dispute regarding the proper scope of claims to the court." Pet. App. 29a (citation omitted). Given that Centripetal was aware of Cisco's claim interpretation and corresponding non-infringement argument since at least the 2020 trial, *supra* pp. 4-5, it should have presented all evidence responding to that argument at trial or sought to do so at the Rule 63 hearing. Even now, Centripetal does not identify what testimony any recalled witnesses would have provided that would have made a difference.

B. Even Centripetal Does Not Argue A Lack Of Notice Regarding The '806 Patent

As to the '806 patent, the petition never contends that Centripetal lacked notice of Cisco's understanding of "responsive to being signaled." Indeed, the petition concedes that Judge Hanes "adopted the same theory that Cisco pushed in the 2020 trial," Pet. 11, and that Centripetal's arguments "responded to precisely the same Cisco arguments," Pet. 30. Cisco made its position clear before, during, and after the first trial, in the first appeal, and at the Rule 63 hearing. *See supra* pp. 6, 8-9; Cisco 2021 C.A. Br. 24-28. Judge Hanes asked Centripetal's counsel directly for his "position on [Cisco's] 'responsive to' argument," Dist. Ct. Dkt. 753 at 414:20-415:19, and her opinion addressed Centripetal's response, Pet.App.108a, 112a. In the court of appeals, Centripetal made no notice argument concerning the '806

patent at all. Centripetal C.A. Br. 42-47; Centripetal C.A. Reply 18-23.

Moreover, the Federal Circuit held that Centripetal forfeited the construction it urged on appeal—that the rule-swap signal need only cause the claimed sequence "as a unit"—because nothing Centripetal cited "indicates that Centripetal fairly presented the district court with this claim construction." Pet. App. 18a-19a. Centripetal's reply brief did not identify where it had preserved the argument, Pet. App. 19a, and its counsel could not do so at oral argument, C.A. Oral Arg. 33:08-33:40.

Accordingly, to reach Centripetal's argument regarding the '806 patent, this Court would first have to set aside a case-specific forfeiture ruling. And Centripetal offers the Court no basis for reversing that ruling. Cisco's position was known since 2020, giving Centripetal every opportunity to present evidence under Cisco's reading of the claims. *See supra* p. 6. Nor did Judge Morgan adopt Centripetal's appellate construction; he never construed "responsive to being signaled" and was not asked to. Finally, Judge Taranto's questions at oral argument (Pet. 30) are not part of the Federal Circuit's decision; he joined the unanimous opinion finding forfeiture and rejecting Centripetal's construction on the merits. Pet. App. 1a, 18a-19a.

II. EVEN ON ITS TERMS, CENTRIPETAL'S QUESTION PRESENTED DOES NOT WARRANT REVIEW

A. Centripetal Identifies No Conflict In Authority Warranting Resolution By This Court

Centripetal does not identify any conflict requiring this Court's attention. Indeed, Centripetal concedes that Federal Circuit decisions have *already adopted* its

desired rule—namely, that "the parties must be provided notice and opportunity to present argument and evidence about the correct construction." Pet. 20. The court of appeals did not depart from that rule. To the contrary, the court dutifully applied it, holding that "any shift in the original construction [did] not create any unfairness" because Cisco "consistently put [Centripetal] on notice of its interpretation of the asserted claims." Pet. App. 16a-17a. At most, then, Centripetal argues that the Federal Circuit's *unpublished* decision in this case misapplied the Federal Circuit's *published* precedent to the record in this case. That is a request for fact-bound error correction. And if the panel really had departed from circuit precedent, the proper course was to seek rehearing en banc, because "[i]t is primarily the task of a Court of Appeals to reconcile its internal difficulties." *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam). But despite obtaining an extension of time for a rehearing petition, Centripetal did not file one.

Centripetal spends most of its petition on a different question: it accuses the Federal Circuit of rendering inconsistent decisions based on "a meaningless distinction between a 'new' claim construction, on the one hand, and a mere 'clarification' or 'elaboration,' on the other." Pet. 21. That question is immaterial here, because the Federal Circuit did not rely on any such "distinction." Rather, the court held that Centripetal received adequate notice of the construction Judge Hanes adopted. Pet. App. 16a-17a.

In any event, there is no conflict in the Federal Circuit that bears on the facts of this case. Every case cited by Centripetal for its asserted intra-circuit divide is a jury case: In each, the court of appeals considered whether, after trial, a district court could test a jury's

verdict against a claim construction different from the one the jury was instructed to apply. *See Wi-LAN, Inc.* v. *Apple, Inc.*, 811 F.3d 455, 464-466 (Fed. Cir. 2016); *Hewlett-Packard Co.* v. *Mustek Sys., Inc.*, 340 F.3d 1314, 1321 (Fed. Cir. 2003); *Mformation Techs., Inc.* v. *Research in Motion Ltd.*, 764 F.3d 1392, 1395-1397 (Fed. Cir. 2014); *Cordis Corp.* v. *Boston Sci. Corp.*, 658 F.3d 1347, 1355-1357 (Fed. Cir. 2011); *Wyeth LLC* v. *Astra-Zeneca Pharms. LP*, 180 F.4th 1371, 1379 (Fed. Cir. 2026); *Magnolia Med. Techs., Inc.* v. *Kurin, Inc.*, 169 F.4th 1094, 1102-1103 (Fed. Cir. 2026). That inquiry concerns the fit between a verdict and the instructions the jury actually received. It does not suggest that a judge deciding an infringement claim is required to resolve all claim construction disputes before trial. The upshot is that Centripetal's alleged intra-circuit split, even as Centripetal presents it, is simply inapposite.

Tellingly, Centripetal does not identify a single Federal Circuit opinion that conflicts with the decision below or adopts Centripetal's view that a judge deciding a non-jury case cannot decide a disputed claim construction issue in the final merits opinion. And Centripetal's assertion that its question presented has "sufficiently percolated at the Federal Circuit" (Pet. 33) is belied by its inability to identify a single Federal Circuit judge who has identified an intra-circuit disagreement on the issue. If the Federal Circuit's decisions were indeed as "standardless" or "inconsistent" as Centripetal believes (Pet. 31-32), at least one member of that court surely would have said so. But nobody has, for the simple reason that Centripetal's claims of intra-circuit disagreement are meritless.

Finally, Centripetal's suggestion that the Federal Circuit's decision is inconsistent with *Markman* v. *Westview Instruments, Inc.*, 517 U.S. 370 (1996), is

meritless. *See* Pet. i, 15, 19. *Markman* held only that "the construction of a patent, including terms of art within its claim, is exclusively within the province of the court." 517 U.S. at 372. It said nothing about *when* a court must announce its construction, and it certainly did not bar a judge from construing a disputed term for the first time in a final decision after hearing the parties' positions. As the Federal Circuit has explained, district courts "may engage in a rolling claim construction, in which the court revisits and alters its interpretation of the claim terms as its understanding of the technology evolves." *Pressure Prods. Med. Supplies, Inc.* v. *Greatbatch Ltd.*, 599 F.3d 1308, 1316 (Fed. Cir. 2010).

B. Centripetal Identifies No Actual Error

Even apart from Centripetal's adjudicated notice of the constructions adopted, which independently forecloses review (*supra* Part I), Centripetal's merits arguments (Pet. 24-25) fail on their own terms. At most, Centripetal seeks correction of a nonprecedential decision, and there was no error to correct.

1. There was no "shift" from any prior construction.

Centripetal's central premise is that Judge Hanes "departed significantly from the earlier plain-meaning construction, as used during the trial and in Judge Morgan's infringement ruling." Pet. 24. But Centripetal does not deny that Judge Hanes was empowered to depart from earlier claim constructions, as long as Centripetal was afforded notice and an opportunity to be heard.

Judge Hanes had full authority to decide claim-construction questions herself. Interlocutory rulings "may be revised at any time before the entry of a judgment," Fed. R. Civ. P. 54(b), and a successor judge "steps into

the shoes of his or her predecessor" and "can alter a previous ruling." *Exxon Corp.* v. *United States*, 931 F.2d 874, 878 (Fed. Cir. 1991); *see In re Agent Orange Prod. Liab. Litig.*, 733 F.2d 10, 13 (2d Cir. 1984). Judge Morgan himself revised a *Markman* construction in his (later vacated) post-trial opinion. Pet. App. 218a-221a. And when Judge Hanes asked Centripetal's counsel whether she, like Judge Morgan, could "look[] at claim construction or interpretation of the claim language … throughout the trial," counsel agreed and added, "Your Honor can consider it and do what you will with it." Dist. Ct. Dkt. 753 at 322:23-323:19. Judge Hanes's statement that she was "permitted to revisit claim construction" (Pet. 25) was thus correct—and was made when admitting documents concerning the '176 patent, which is not at issue here. Dist. Ct. Dkt. 750 at 10:23-11:12.

In any event, there was no earlier construction from which to depart. Judge Morgan's February 2020 *Markman* order construed a list of terms that included neither "particular type of data transfer" in the '193 patent nor "responsive to being signaled" in the '806 patent. Pet. App. 60a-61a. The same is true of the amended table of constructions in Judge Morgan's vacated opinion. Pet. App. 219a-220a. Centripetal never asked any court to construe "particular type of data transfer" (Pet. App. 29a, 37a), and it concedes that "[n]either party asked for an explicit construction" (Pet. 26). Indeed, the pages Centripetal cites for a supposed "earlier" construction (Pet. 24 (citing Pet.App.218a-221a)) show the opposite of what Centripetal claims: they reflect Judge Morgan revising one of his own *Markman* constructions (involving a different patent not at issue here) "due to a developed understanding of the technology in the case," and invoking the settled rule that "district courts may engage in a rolling claim construction." Pet. App. 218a-221a

(quoting *Pressure Prods.*, 599 F.3d at 1316). By contrast, Judge Hanes applied the *Markman* order "without modification." Pet. App. 27a. Centripetal argued on reconsideration that the court had "altered the settled understanding of the constructions reached by the initial presiding judge," C.A.J.A.22126, but the court rejected that argument, Pet.App.27a, and Centripetal abandoned it on appeal. Judge Hanes thus resolved, for the first time, a claim-scope dispute the parties had litigated since before the first trial.

Centripetal also asserts that Judge Hanes "changed again" between her Rule 63 opinion and her reconsideration order. Pet. 24-25. She did not. The Rule 63 opinion relied on the specification's statement that the second filtering stage determines "the specific method or type of communication (e.g., file read, file write, encrypted communication, etc.)," and on the specification's contrast between permitting one communication method (HTTP GET requests) and blocking other methods (PUT or POST requests). Pet. App. 81a-82a, 90a (quoting C.A.J.A.161(8:45-52), C.A.J.A.158(2:43-54)). The reconsideration order's statement that the term "refers to the specific technique, or method, associated with the data transmission" simply restated that understanding. Pet. App. 35a (citing C.A.J.A.158(2:43-54)). The court offered that "further elaboration" only to address an argument Centripetal advanced in its reconsideration motion. Pet. App. 32a-34a. As the court explained, its earlier framing had "aligned with the arguments the parties presented at trial" (Pet. App. 33a n.3; *see* Pet. App. 30a), and it was Centripetal that "now seeks to raise new theories of liability post-trial." Pet. App. 38a.

Besides, any variation in the district court's wording is immaterial, because the court of appeals decided the construction for itself. Reviewing de novo, the Federal

Circuit construed the claims based on the specification and on Centripetal's own statements in the IPR proceeding. Pet. App. 11a-15a. It expressly declined to rely on the technical dictionaries the district court had consulted. Pet. App. 13a n.5. Centripetal fully briefed its preferred construction on appeal (Centripetal C.A. Br. 32-38; Centripetal C.A. Reply 3-11), and it then conceded that it would lose under the construction the court of appeals adopted (Pet. App. 16a). Centripetal's real disagreement, then, is with the Federal Circuit's claim construction in a nonprecedential opinion. That is not a question warranting this Court's review.

2. Neither court applied prosecution history disclaimer.

Centripetal next contends that its IPR brief was "the keystone" of the construction, "stemming from the new application of prosecution-disclaimer doctrine," and faults both courts for failing to apply the "clear and unmistakable" standard. Pet. 25. That is a misdirection, because neither court found prosecution history disclaimer, which narrows a claim term's ordinary meaning where the patentee has clearly surrendered claim scope. *Omega Eng'g, Inc.* v. *Raytek Corp.*, 334 F.3d 1314, 1323-1324 (Fed. Cir. 2003). The courts below did something different: they determined the ordinary meaning itself, read "in the context of the entire patent." *Phillips* v. *AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc).

The Federal Circuit began with the specification, which it described as "the single best guide to the meaning of a disputed term." Pet. App. 13a (quoting *Phillips*, 415 F.3d at 1315). It held that the specification describes "two (2) stages" of filtering, the second of which considers "the specific method or type of communication." Pet.

App. 13a-14a. The court then treated Centripetal's IPR statements as confirming that reading, explaining that such statements "can be considered for claim construction." Pet. App. 15a (quoting *Aylus Networks, Inc.* v. *Apple Inc.*, 856 F.3d 1353, 1362 (Fed. Cir. 2017), and citing *Shire Dev., LLC* v. *Watson Pharms., Inc.*, 787 F.3d 1359, 1366 (Fed. Cir. 2015)). The district court likewise held that the claim language, the specification, and Centripetal's IPR statements "all support" its understanding of the claims. Pet. App. 89a, 94a. That is ordinary claim construction. The prosecution history "can often inform the meaning of the claim language by demonstrating how the inventor understood the invention." *Phillips*, 415 F.3d at 1317. And even where such statements "do not rise to the level of unmistakable disavowal, they do inform the claim construction." *Shire*, 787 F.3d at 1366.

Centripetal also forfeited this argument. In the court of appeals, Centripetal never contended that its IPR statements failed the "clear and unmistakable" standard. Its opening brief did not mention its IPR submission at all, and its reply argued only that the filing did not "suggest" the district court's construction (Centripetal C.A. Reply 9-10).

Nor was the IPR brief a "belated" or "new" exhibit, as Centripetal suggests. Pet. 10, 25. Its most relevant pages had already been admitted and discussed at the 2020 trial before Judge Morgan (*supra* p. 5), and Judge Hanes admitted the remainder because the brief had been "made available to the Court in [its] entirety during the trial," had been "discussed in the trial," and had already been partially "admitted into the record." Dist. Ct. Dkt. 750 at 10:7-22. Two of the three pages the Federal Circuit quoted (C.A.J.A.19013, 19024) were part of the 2020 trial record, and Cisco quoted them in its 2021

appeal briefing. Cisco 2021 C.A. Br. 50; Cisco 2021 C.A. Reply Br. 19-20, 23.

3. Neither *Markman* nor due process required the district court to issue its claim construction before its merits ruling

Centripetal obliquely invokes this Court's decision in *Markman* and principles of "due process" to suggest that the district court was somehow obligated to announce its claim construction before resolving patent infringement on the merits. Pet. i, 15-19, 23.

Centripetal made no such argument below, and it is accordingly forfeited. *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (This Court is "a court of review, not of first view."). Indeed, Centripetal affirmatively waived the point: when Judge Hanes asked whether she, like Judge Morgan, could "look[] at claim construction or interpretation of the claim language … throughout the trial," Centripetal's counsel answered, "Right." He then added: "Your Honor can consider it and do what you will with it." Dist. Ct. Dkt. 753 at 322:23-323:19. Centripetal's counsel also told the court that he "encourage[s]" district judges to engage in "rolling claim construction." Dist. Ct. Dkt. 759 at 435:9-13. And on appeal, Centripetal acknowledged that the Federal Circuit's "precedents permit district courts to engage in rolling claim construction," arguing only that the parties must receive notice and an opportunity to be heard. Centripetal C.A. Br. 38; *accord* C.A.J.A.22133.

In any event, nothing requires a court to issue a claim construction order before deciding the merits of an infringement claim. *Markman* held that claim construction is "exclusively within the province of the court," not the jury. 517 U.S. at 372. Once again, there was no jury here: the district judge construed the claims, and the

court of appeals reviewed her construction de novo. *Markman* does not specify *when* the court must announce its construction, and it certainly does not require a freestanding *Markman* order before a bench trial concludes. In a bench trial, the judge both construes the claims and finds the facts. Rule 52 requires the court to "state its conclusions of law separately" and permits those conclusions to "appear in an opinion or a memorandum of decision filed by the court." Fed. R. Civ. P. 52(a)(1). Claim construction is such a conclusion of law. And as for due process, Centripetal cites no authority suggesting that the Constitution requires that claim construction occur at a particular point in the litigation, as long as the parties have notice of and an opportunity to respond to a proposed construction, which Centripetal had here. *See supra* pp. 14-17.

The Federal Circuit has accordingly long held that "a district court may engage in claim construction during various phases of litigation, not just in a *Markman* order." *Conoco, Inc.* v. *Energy & Env't Int'l, L.C.*, 460 F.3d 1349, 1359 (Fed. Cir. 2006). In *Conoco*, the Federal Circuit reviewed de novo and affirmed a construction the district court had adopted in its findings of fact and conclusions of law after a bench trial. *Id.* at 1359-1360. District courts may likewise engage in "rolling claim construction, in which the court revisits and alters its interpretation of the claim terms as its understanding of the technology evolves." *Jack Guttman, Inc.* v. *Kopykake Enters., Inc.*, 302 F.3d 1352, 1361 (Fed. Cir. 2002); *see Pressure Prods.*, 599 F.3d at 1316. As noted, Centripetal accepted all of this below.

Judge Hanes's remark that the Rule 63 proceeding was effectively "day one of the trial" (Pet. 25) does not help Centripetal. That remark came in ruling on the admissibility of two documents concerning the '176 patent,

which is not at issue in Centripetal's petition. Dist. Ct. Dkt. 750 at 10:23-11:12. The remark also accurately described the remand proceeding: a successor judge hearing a case under Rule 63 "steps into the shoes of his or her predecessor" and "can alter a previous ruling" just as the original judge could alter his own ruling. *Exxon*, 931 F.2d at 878; *see* Fed. R. Civ. P. 54(b). That principle applies with special force here, where the predecessor judge's merits opinions were vacated and the successor judge was directed to decide the case "without regard for the vacated opinions and orders." Pet. App. 168a.

Accordingly, Centripetal forfeited any argument directed to the timing of Judge Hanes's claim construction, and any effort to impose a restriction on its timing is meritless in any event.

C. Centripetal Identifies No Cognizable Prejudice

A further reason to deny review is that the outcome would not change even were the question presented answered in Centripetal's favor. Centripetal does not explain how it could have proven infringement if it had received the additional notice and opportunity it says were required. "[T]his Court decides questions of public importance … in the context of meaningful litigation"; it does not grant review to decide questions that would not affect the judgment. *The Monrosa* v. *Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959).

Most importantly, Centripetal conceded at oral argument in the court of appeals that it would lose under Cisco's construction of the '193 patent, and the panel relied on that concession. *See* Pet.App.16a (noting that "Centripetal agree[d] it would lose based on this construction"); C.A. Oral Arg. 7:00-7:20. Centripetal does

not explain why the timing of a construction it admits defeats its infringement claim could have mattered.

Centripetal also does not identify any evidence it would have offered to prove infringement under the construction the courts adopted. Nor did Centripetal lack the opportunity to offer such evidence. On remand, "the parties were given an opportunity to recall any witness whose testimony was material and disputed, but chose not to do so." Pet. App. 9a-10a. Centripetal affirmatively asked that the case be decided "based on the current record," and it told the district court that recalling witnesses would be "unnecessary and wasteful." Pet. App. 27a. And notably, when Centripetal later tried to reopen the record in its reconsideration motion and on appeal, the material it proffered was material it already referenced at the Rule 63 hearing. *See* C.A.J.A.22226-22227 & n.5; Cisco C.A. Br. 44-45. Centripetal's petition for certiorari does not argue that it was unfairly prejudiced by its inability to refer to that material, which it had already discussed before the district court.

Centripetal offers three new theories of prejudice, each of which fails. *First*, Centripetal says that it could have shown that the statements in its IPR brief about the '193 patent's limited scope "did not constitute a clear and unmistakable surrender under Federal Circuit precedent." Pet. 27. Centripetal did not make this argument to the court of appeals, so it is forfeited. *See supra* p. 25. It is also irrelevant. As explained above (at p. 24), neither the court of appeals nor the district court held that Centripetal disclaimed claim scope during prosecution. Their reasoning did not depend on the "clear and unmistakable" standard that governs prosecution history disclaimer. Rebutting the disclaimer standard thus would not have affected the claim construction analysis the courts actually performed.

Second, Centripetal notes its counsel's statement that it "would like to recall some witnesses based upon the claim construction issue." Pet. 27 (quotation marks omitted). Centripetal did not rely on this statement in the court of appeals, and the argument is forfeited. But even now, Centripetal does not name the witnesses it would have recalled, describe the testimony they would have given, or explain why it would have mattered. It is too late to do so in reply.

Third, Centripetal claims it could have offered "[a]dditional evidence" regarding "the patent specification and a correct application of the claim-differentiation doctrine." Pet. 27. Again, Centripetal does not say what that "evidence" would be, or indeed why more evidence would be needed to make arguments about the patent's specification and claims, which have been in the record since 2020. Moreover, before the district court, Centripetal had ample opportunity to raise arguments about the patent specification and claim differentiation in response to Cisco's claim construction position. And Centripetal did raise such arguments. *E.g.*, C.A.J.A.21234-21238(252:19-256:6); Dist. Ct. Dkt. 753 at 321:5-17. Because Centripetal has not shown that the non-infringement judgment would have been different even had the district court issued its claim construction sooner, this case does not "afford[] … an appropriate instance" to resolve the question presented. *The Monrosa*, 359 U.S. at 182.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 2026