

NOTE: This disposition is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**COMMIL USA, LLC,**  
*Plaintiff-Appellee,*

v.

**CISCO SYSTEMS, INC.,**  
*Defendant-Appellant.*

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2012-1042

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Appeal from the United States District Court for the Eastern District of Texas in case no. 07-CV-0341, Magistrate Judge Charles Everingham.

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**ON PETITION FOR PANEL REHEARING AND  
REHEARING EN BANC**

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WILLIAM F. LEE, Wilmer Cutler Pickering Hale and Dorr LLP, of Boston, Massachusetts, filed a petition for defendant-appellant. With him on the petition were MARK C. FLEMING, JONATHAN W. ANDRON and FELICIA H. ELLSWORTH; and WILLIAM G. MCELWAIN, of Washington, DC. Of counsel on the petition were HENRY B. GUTMAN, Simpson Thacher & Bartlett LLP, of New York, New York; and JEFFREY E. OSTROW, HARRISON J. FRAHN, IV,

PATRICK E. KING, and JONATHAN SANDERS, of Palo Alto, California.

MARK S. WERBNER, Sayles Werbner, P.C., of Dallas, Texas, filed a response to the petition for plaintiff-appellee. With him on the response were RICHARD A. SAYLES and MARK D. STRACHAN. Of counsel on the response were LESLIE V. PAYNE, NATHAN J. DAVIS and MIRANDA Y. JONES, Heim, Payne & Chorush, of Houston, Texas.

ROBERT L. KINDER JR., Dickstein Shapiro LLP, of Washington, DC, for amici curiae SAP America, Inc. and SAS Institute Inc. in support of the petition for rehearing en banc. With him on the brief were JEFFREY K. SHERWOOD; and DAWN L. RUDENKO, of New York, New York.

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Before RADER, *Chief Judge*, NEWMAN, LOURIE, DYK, PROST, MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, and CHEN, *Circuit Judges*.<sup>1</sup>

O'MALLEY, *Circuit Judge*, dissenting without opinion from the denial of the petition for rehearing en banc.

PER CURIAM.

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## ORDER

A combined petition for panel rehearing and rehearing en banc was filed by defendant-appellant, and a response thereto was invited by the court and filed by plaintiff-appellee. The petition for rehearing was referred to the panel that heard the appeal, and thereafter the

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<sup>1</sup> *Circuit Judge* Hughes did not participate.

petition for rehearing en banc and response were referred to the circuit judges who are authorized to request a poll of whether to rehear the appeal en banc. A poll was requested, taken, and failed.

Upon consideration thereof,

IT IS ORDERED THAT:

- (1) The petition of defendant-appellant for panel rehearing is denied.
- (2) The petition of defendant-appellant for rehearing en banc is denied.
- (3) The mandate of the court will issue on November 1, 2013.

FOR THE COURT

October 25, 2013  
Date

/s/ Daniel E. O'Toole  
Daniel E. O'Toole  
Clerk