UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ARISTA NETWORKS, INC.
Petitioner,

v.

CISCO SYSTEMS, INC.
Patent Owner.

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Case IPR2016-00309
Patent 7,224,668

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**PETITIONER'S OPPOSITION
TO PATENT OWNER'S MOTION TO STRIKE**

I. INTRODUCTION

Pursuant to Paper No. 40, Petitioner files this Opposition to Patent Owner's Motion to Strike Petitioner's Reply (Paper 42). As stated below, Petitioner's Reply (Paper 34) does not exceed the permissible scope contemplated by 37 C.F.R. § 42.23(b) and Patent Owner's Motion to Strike should be denied.

II. ARGUMENT

The arguments Patent Owner attempts to strike from Petitioner's Reply were properly raised in rebuttal to arguments made in Patent Owner's Response (Paper 19). Case IPR2014-00153, Paper 18 (entered September 18, 2014) at 2 ("We explained that, generally speaking, as long as the Reply is in response to arguments raised in the Patent Owner's response, then it is within the proper scope of a Reply. 37 C.F.R. § 42.23.").

A. Petitioner's argument that claimed "port services" are executed by Amara's "packet classifiers" is proper rebuttal.

In the Patent Owner's Response, Patent Owner argues that the "plain meaning" of the last element of the challenged independent claims in this IPR (elements 1.5/19.5/55.5) require applying both port services and control plane port services to control plane packets. POR at 15-18. Petitioner's Reply properly rebuts this argument by noting that this supposed limitation is not present in these claim elements and that, even if it were, Amara discloses applying port services to incoming control plane packets via its "packet classifiers." *See* Reply § II(A).

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No doubt sensing the weakness of its position, Patent Owner now asks the Board to strike the latter point of Petitioner's rebuttal—arguing that Petitioner should have predicted this tortured reading of the claims and include this argument in the Petition. As fully discussed in Petitioner's Reply, there is no basis for reading the claims as Patent Owner suggests and, as such, Petitioner did not address this reading in its Petition. The Board has recognized that "where the patent owner response raises an argument that reasonably could not have been anticipated by the petitioner, the petitioner properly may, as a part of its reply, rely on new evidence or cite to different portions of the same prior art reference." Case IPR2013-00242, Paper 122 (entered April 22, 2014) at 4. Such a case is clearly presented here.

Moreover, in the August 23, 2016 deposition of Petitioner's expert Dr. Bill Lin—more than a month before Patent Owner filed its Response on September 29, 2016—Patent Owner was put on notice that Dr. Lin believes Amara discloses applying port services to control plane packets via its packet classifiers. Indeed, Patent Owner dedicated nearly four pages of its Response to addressing the position. POR at 25-28. Patent Owner suggests Dr. Lin's testimony in this regard was somehow "nonresponsive" or "limited" in nature. Paper 42 (Patent Owner's Motion to Strike) at 3. To the contrary, Dr. Lin provided comprehensive, responsive answers to questions posed by counsel. *See, e.g.*, Ex. 2005 at 111: 4-10

("Q: Okay. And is it your position that the policy engines 224 through 228 [of Amara] are what applies port services? A. So it's my opinion that port services includes policies and policy engines. I would just like to note that it could be made bigger to include packet classification, as well, in general."); *see also id*. at 94:20-95:3 (noting that claim 17 of the '668 patent "explicitly includes packet classification as a port service"). To the extent the questioning attorney wished to have more information on the position, she needed only to have asked.

Patent Owner suggests it put Petitioner on notice of its reading of the claims as requiring both port services and control plane port services to be applied to control plane packets. In particular, Patent Owner alleges it "discussed this claim element in accordance with its plain and ordinary meaning" in a Patent Owner Preliminary Response (POPR) filed in another case regarding the '668 patent prior to the filing of the Petition in the instant case. Paper 42 (Patent Owner's Motion to Strike) at 4. Comparing the POPR in question with the POR in the instant case, however, makes clear no such notice was provided. Indeed, the pages Patent Owner cites as supposedly evidencing notice do not even discuss the claim element for which they are argued to have provided notice. *Compare* Paper 6, IPR2015-00974, at 25-27 (discussing claim elements 1.2/19.2/37.2/55.2) *with* POR at 15-18 (discussing claim elements 1.5/19.5/55.5).

In sum, there is no basis for Patent Owner's allegations that Petitioner should have addressed Patent Owner's creative reading of claim elements 1.5/19.5/55.5 in its Petition, and similarly nothing wrong with Petitioner providing rebuttal regarding the same in its Reply.

B. Petitioner's argument that CoreBuilder discloses "monitoring packet flows" is proper rebuttal.

In its Patent Owner's Response, Patent Owner also argues that the combination of Amara and CoreBuilder fails to teach the second limitation of each independent claim (elements 1.2/19.2/55.2) because CoreBuilder does not disclose "port services" for "monitor[ing] packet flows." POR at 29-30. Petitioner's Reply properly rebuts this argument by noting that Amara discloses this limitation such that CoreBuilder need not have duplicative disclosure and that, even if there were such a requirement, CoreBuilder does teach monitoring of packet flows. *See* Reply § II(B). Once again, Patent Owner asks the Board to strike the latter point of Petitioner's rebuttal—suggesting that Petitioner should have somehow anticipated and accounted for Patent Owner's misstatement of the test for obviousness and included this argument in the Petition. As fully discussed in Petitioner's Reply, there is simply no requirement that CoreBuilder disclose the exact same set of port services as Amara for the combination to teach the claim element as Patent Owner suggests. Accordingly, there is no basis for alleging Petitioner should have addressed this supposed requirement in its Petition. Petitioner instead properly

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