

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Juniper Networks, Inc., Ruckus Wireless, Inc., Brocade Communication
Systems, Inc. and Netgear, Inc.,
Petitioners

v.

Chrimar Systems, Inc.,
Patent Owner

Case No. IPR2016-01399

U.S. Patent No. 8,902,760 B2

Petitioners' Opposition to Chrimar's Motion to Strike

Mail Stop Patent Board
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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Chrimar's Motion to Strike should be denied because it misapplies the law and fails to comply with the Board's Order (Paper 42). The Board ordered Chrimar to "[i]dentify . . . exactly which arguments in Petitioner's Reply allegedly exceed the proper scope set forth in 37 C.F.R. § 42.23(b), and explain specifically why those arguments exceed the proper scope." *Id.*, 2. But instead of explaining how Petitioners' arguments allegedly exceed the proper scope of the Reply, Chrimar argues that certain of Petitioners arguments are "new" and were not in the Petition. This, however, is not the legal standard for determining whether an argument is within the proper scope of a reply.

The purpose of a Reply is to respond to the patent owner's arguments in its response. 37 C.F.R. § 42.23(b). As Petitioners have repeatedly explained in their Reply and Opposition to Chrimar's Motion to Exclude, the disputed arguments (*i.e.*, those which Chrimar moves to strike) were included in the Reply to rebut Chrimar's Response—specifically to demonstrate that Chrimar's arguments in the Response are irrelevant and, if considered, that they are incorrect and unsupported. Chrimar's Motion now seeks to substantially modify the rule regarding the proper scope of replies to hold that anything that directly rebuts arguments in a response is nevertheless improper if it was not included in the Petition. That is simply not the law, and such an approach would effectively nullify the utility and purpose of a

reply brief. Chrimar's Motion should therefore be denied because it fundamentally misapplies 37 C.F.R. § 42.23(b).

Additionally, the Motion should be denied because it is not commensurate with what the Board allowed Chrimar to file. Chrimar was authorized "to file a motion to strike *certain portions* of Petitioner's Reply" and ordered to "identify (by page and line numbers) exactly" the arguments Chrimar seeks to strike. Order, 2-3. Instead, Chrimar's Motion identifies some arguments, but then moves to strike the *entire* Reply. In view of the Order, Chrimar should be deemed to have waived any right to relief with respect to arguments not specifically identified in its Motion "by page and line numbers." *See id.* The Motion also presents new evidence and argument regarding patentability, which the Board expressly ordered Chrimar *not* to include in the Motion. *Id.*

A. Chrimar's Motion Does Not Comply With the Board's Order

The Board ordered Chrimar to identify exactly which arguments in the Reply it is challenging and "explain specifically" why Chrimar believes they are not responsive to the Patent Owner's Response. Order, 1-2. Instead, Chrimar chose to argue about the sufficiency of the Petition, to attempt to rebut the arguments in the Reply, and to present new arguments and evidence that the Board denied Chrimar permission to file. For example, the Motion discusses a draft

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