

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' REPLY IN SUPPORT OF THEIR MOTION TO EXCLUDE

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I. THE MADISETTI DECLARATION (EXHIBIT 2038)

Dr. Madisetti's opinions are premised on speculation and a fundamental disregard for the evidence in this IPR (*e.g.*, time of invention, availability of unused pairs, isoEthernet standard). Petitioners' Motion to Exclude (Paper 46), therefore, argued that Dr. Madisetti's declaration (Ex. 2038) should be excluded because it falls short of the mandates of F.R.E. 702, 703, and 37 C.F.R. § 42.65. Rather than address these arguments raised by the Petitioners' Motion, Chrimar's Opposition (Paper 50) argues that: (1) F.R.E. 702 and 703, as interpreted by the Supreme Court in *Daubert* and *Kumho Tire*, do not apply in IPRs such that the Board should admit clearly unreliable opinions; and (2) 37 C.F.R. § 42.64(b) requires a complete analysis of a patent owner's expert declaration in the five days that a petitioner has to submit objections following the filing of the patent owner's response. Neither argument is supported by precedent or common sense.

A. Chrimar Does Not Refute That Dr. Madisetti's Opinions, Which Are Unsupported and Contrary to the Evidence, Demonstrate His Unreliability as an Expert for the Purpose of This IPR

Although Chrimar is correct that it is "within the Board's discretion to assign the appropriate weight to evidence," the Federal Rules of Evidence (F.R.E.), as applied in *Daubert* and *Kumho Tire*, still do apply to IPRs. 37 C.F.R. § 42.62(a). At some point, when a purported expert's opinions are so lacking in

support, so laden with errors, and so clearly based on unreliable reasoning and methodology, their exclusion does become the appropriate remedy. Petitioners maintain that the breadth of errors in Dr. Madisetti's declaration reaches this point. Petitioners' Motion specifically identifies a host of examples of Dr. Madisetti's factual misunderstandings and conclusory, unsupported statements to demonstrate that his opinions cannot be accepted as reliable, including the following examples:

- “At the time of Chrimar's invention (1997)” (Motion, 2);
- “Power over Ethernet ('POE') did not exist in 1997” (*id.*, 3);
- “I considered my opinions from the viewpoint of one of ordinary skill in the art in the '97 time frame” (Ex. 1020, 196:18-197:3);
- “CAT-3 and CAT-5 are cable standards that require cables with eight conductors twisted into four pairs” (Motion, 5);
- “[U]nused wires were readily available in Ethernet installations” (*id.*):
- “Q. Can't you use 25 pair cable for 10BASE-T? A. That was not the case.” (*id.*, 6 (*citing* Ex. 1020));
- “isoEthernet used ISDN signals, *not Ethernet signals*, to transmit data” and (*id.*, 6-7 (*emphasis added*)); and
- “isoEthernet connections [] carried ISDN (not Ethernet) traffic” (*id.*, 7).

In its Opposition, Chrimar does not dispute that Dr. Madisetti failed to

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