

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.,
Petitioner,

v.

CHRIMAR SYSTEMS, INC.,
Patent Owner.

Case IPR2016-01389 (Patent 8,155,012 B2)
Case IPR2016-01391 (Patent 8,942,107 B2)
Case IPR2016-01397 (Patent 9,019,838 B2)
Case IPR2016-01399 (Patent 8,902,760 B2)¹

Before KARL D. EASTHOM, GREGG I. ANDERSON, and
ROBERT J. WEINSCHENK, *Administrative Patent Judges*.

WEINSCHENK, *Administrative Patent Judge*.

ORDER²
Conduct of the Proceeding
37 C.F.R. § 42.5

¹ Ruckus Wireless, Inc., Brocade Communication Systems, Inc., and Netgear, Inc. filed petitions in (now terminated) IPR2017-00718, IPR2017-00719, IPR2017-00720, and IPR2017-00790, and were joined to the above-listed proceedings.

² This Order will be entered in each of the above-listed proceedings as the caption indicates. The parties are not permitted to use this caption style.

IPR2016-01389 (Patent 8,155,012 B2)
IPR2016-01391 (Patent 8,942,107 B2)
IPR2016-01397 (Patent 9,019,838 B2)
IPR2016-01399 (Patent 8,902,760 B2)

I. INTRODUCTION

On September 6, 2017, Judges Easthom, Anderson, and Weinschenk held a telephone conference call with counsel for Juniper Networks, Inc. (“Petitioner”) and counsel for Chrimar Systems, Inc. (“Patent Owner”). A court reporter transcribed the call. This Order summarizes the call, but the court reporter’s transcript contains a more complete record. Paper 64 (“Tr.”).³

II. ANALYSIS

In IPR2016-01389, Petitioner challenges the patentability of certain claims of U.S. Patent No. 8,155,012 B2 (“the ’012 patent”), and, in IPR2016-01399, Petitioner challenges the patentability of certain claims of U.S. Patent No. 8,902,760 B2 (“the ’760 patent”). During the oral hearing for these proceedings held on August 31, 2017, Patent Owner notified us for the first time that the ’012 patent is the subject of an *ex parte* reexamination that was filed on May 18, 2016,⁴ and the ’760 patent is the subject of an *ex parte* reexamination that was filed on August 29, 2016⁵ (collectively, “the related reexaminations”). In an email to the Board on September 1, 2017, Petitioner

³ All citations are to the record in IPR2016-01389.

⁴ Reexamination Control No. 90/013,740.

⁵ Reexamination Control No. 90/013,802.

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requested authorization to file a motion to stay the related reexaminations pending the outcome of these proceedings.⁶

The parties knew about the related reexaminations at least since February 6, 2017. Tr. 8:13–18, 10:3–10; Ex. 3002; Ex. 3003. Neither party, however, updated its mandatory notices under 37 C.F.R. §§ 42.8(a)(3), (b)(2), to identify the related reexaminations, or otherwise notified us of the related reexaminations prior to the oral hearing. Tr. 8:2–7, 10:15–18. During the call on September 6, 2017, the parties did not provide an adequate explanation for their delay in notifying us of the related reexaminations. *Id.* at 8:13–9:7, 10:15–12:21.

The related reexaminations are at a very advanced stage now. The reexamination of the '012 patent has concluded with all of the reexamined claims being rejected (Tr. 5:19–6:2; Ex. 3004), and an appeal brief has been filed by Patent Owner (Ex. 3005). The reexamination of the '760 patent has concluded with a notice of intent to issue a reexamination certificate. Tr. 6:16–20; Ex. 3006. Further, the related reexaminations do not appear to involve the same grounds of unpatentability as these proceedings. We note that the related reexaminations involve a prior art reference known as Bloch,⁷ which also is involved in these proceedings. Tr. 13:17–22; Ex. 3005, 36–37; Ex. 3007, 6. However, in the related reexaminations, Bloch

⁶ In the same email, Petitioner also requested authorization to file a motion for sanctions against Patent Owner for its delay in notifying the Board of the related reexaminations. During the call on September 6, 2017, though, Petitioner withdrew that request. Tr. 23:14–17.

⁷ Bloch et al., U.S. Patent No. 4,173,714 (issued Nov. 6, 1979) (“Bloch”).

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was applied to claims that are not at issue in the instant *inter partes* review proceedings. Ex. 3005, 36–37; Ex. 3007, 6.

After considering the specific facts and circumstances presented in these proceedings, we deny Petitioner’s request for authorization to file a motion to stay the related reexaminations. We are not persuaded that a motion to stay is appropriate at this time because 1) Petitioner knew about the related reexaminations at least since February 6, 2017, but waited until September 1, 2017, to request authorization for a motion to stay the related reexaminations; 2) the related reexaminations are at a very advanced stage now; and 3) the related reexaminations do not appear to involve the same grounds of unpatentability as these proceedings.

III. ORDER

In consideration of the foregoing, it is hereby
ORDERED that Petitioner’s request for authorization to file a motion to stay the related reexaminations is *denied*.

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PETITIONER:

Nima Hefazi
Michael Fleming
Jonathan Kagan
Talin Gordnia
IRELL & MANELLA, LLP
nhefazi@irell.com
mfleming@irell.com
jkagan@irell.com
tgordnia@irell.com

Joseph A. Powers
Christopher J. Tyson
Matthew S. Yungwirth
DUANE MORRIS LLP
japowers@duanemorris.com
cjtyson@duanemorris.com

PATENT OWNER:

Frank A. Angileri
Thomas A. Lewry
Marc Lorelli
Christopher C. Smith
BROOKS KUSHMAN P.C.
CHRMCO110IPR2@brookskushman.com

Richard W. Hoffmann
REISING ETHINGTON P.C.
hoffmann@reising.com