

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 IPR2016-01399¹
U.S. Patent No. 8,902,760

PATENT OWNER'S RESPONSE TO PAPER 65

¹ Ruckus Wireless, Inc., Brocade Communication Systems, Inc. and Netgear, Inc. filed a petition in (now terminated) IPR2017-00719, who have been joined to the instant proceeding.

INTRODUCTION

In the instant proceedings, the Board instituted *Inter Partes* Review of claims 1, 31, 37, 59, 69, 72, 73, 106, 112, 134, 142, and 145 of U.S. Patent No. 8,902,760 under 35 U.S.C. § 314(a). (Paper 8, pp. 20-21.) In Paper 65, the Board asked the parties to address two issues relating to the claims of the ‘760 patent amended by the *Ex Parte* Reexamination Certificate, which issued on September 18, 2017. The two issues are: “1) whether we should issue a final written decision with respect to the amended claims or terminate this proceeding as to the amended claims; and 2) whether the limitation added to the amended claims was addressed by the parties in the Petition and the Patent Owner Response in this proceeding, and, if so, where that limitation was addressed in those papers.”

As relevant here, the Certificate resulted in amended claims 73, 106, 112, 134, 142, and 145. Claim 73 is an independent claim; the remaining claims are dependent from claim 73. As discussed below, Chrimar amended Claim 73 to bring the phrase “the piece of central network equipment is a BaseT Ethernet hub” up from dependent claim 101, effectively re-writing claim 101 as an independent claim. Petitioners did not seek review of claim 101 in the present IPR proceeding.

1. The Board should terminate this proceeding as to the amended claims

Amended claims 73, 106, 112, 134, 142, and 145 are new claims and are not the subject of the present IPR proceeding. *See, e.g., Bloom Eng'g Co. v. North Am. Mfg. Co.*, 129 F.3d 1247, 1250 (Fed. Cir. 1997) (explaining that reexamination claims “have effect continuously from the date of the original patent” only “when the reexamined or reissued claims are identical to those of the original patent”). The Board should terminate the IPR with respect to original claims 106, 112, 134, 142, and 145 because those original claims no longer exist in the ‘760 patent. Adjudicating the amended claims is outside of the Board’s institution decision and the purview of § 314(a).

2. The parties did not address the limitation added to the amended claims in the Petition and the Patent Owner Response in this proceeding

The limitation added to amended independent claim 73 is: “the piece of central network equipment is a BaseT Ethernet hub” as shown below (italics added):

73. A BaseT Ethernet system comprising:

Ethernet cabling having at least first and second individual pairs of conductors used to carry BaseT Ethernet 25 communication signals, the at least first and second individual pairs of conductors physically connect between a piece of BaseT Ethernet terminal

equipment and a piece of central network equipment, *the piece of central network equipment is a BaseT Ethernet hub*; the piece of central network equipment having at least one DC supply, the piece of BaseT Ethernet terminal equipment having at least one path to draw different magnitudes of current flow via the at least one DC supply through a loop formed over at least one of the conductors of the first pair of conductors and at least one of the conductors of the second pair of conductors, the piece of central network equipment to detect at least two different magnitudes of current flow through the loop.

Chrimar incorporated the phrase “the piece of central network equipment is a BaseT Ethernet hub” from dependent claim 101² into claim 73 and canceled claim 101. Claim 101 and its subject matter were never a part of the instant IPR proceeding. The parties made no argument about the limitation “the piece of central network equipment is a BaseT Ethernet hub” in the present proceeding. Accordingly, the present proceeding does not include any arguments regarding the limitation added to the claims amended by the Reexamination Certificate.

² Claim 101 stated, “The BaseT Ethernet system of claim 73 wherein the piece of central network equipment is a BaseT Ethernet hub.”

For the reasons indicated above, the Board should terminate the present IPR proceeding directed to original claims 106, 112, 134, 142, and 145.

Respectfully submitted,

Dated: November 7, 2017

/Frank A. Angileri/
Frank A. Angileri (Reg. No. 36,733)
Thomas A. Lewry (Reg. No. 30,770)
Marc Lorelli (Reg. No. 43,759)
Christopher C. Smith (Reg. No. 59,669)
Brooks Kushman P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075
(248) 358-4400

Richard W. Hoffmann (Reg. No. 33,711)
Reising Ethington PC
755 West Big Beaver Rd., Suite 1850
Troy, Michigan 48084
248.786.0163

Attorneys for Patent Owner

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