

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 IPR2016-01399
U.S. Patent No. 8,902,760

**PETITIONER'S BRIEF PURSUANT TO
ORDER FOR ADDITIONAL BRIEFING REGARDING
AMENDMENTS MADE DURING EX PARTE REEXAMINATION**

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Pursuant to the Panel's Order (Paper 65), Petitioners submit this brief regarding the claims that Patent Owner amended in the *ex parte* reexamination during this IPR, *i.e.*, Claim 73 and its dependents 106, 112, 134, 142, and 145.

I. The Board Should Issue a Final Written Decision as to the Amended Claims and Not Terminate this Proceeding as to those Claims

A longstanding goal of the *inter partes* review is to improve the PTO's procedures to strengthen patent quality. 153 Cong. Rec. E773-775. In line with this goal, the Board may exercise the Director's broad authority to determine the manner in which an IPR may proceed when another proceeding that involves the same patent is before the Office during the pendency of the IPR (such as the previously co-pending *ex parte* reexamination in which the Patent Owner chose to amend claims that were concurrently at issue in this IPR). 35 U.S.C. § 315(d).

As discussed in detail in Section II of this brief, the only amendment relevant to this proceeding is that Patent Owner limited the "central network equipment" of claim 73 to "*a BaseT Ethernet hub*." See Ex. 2056, 2. Prior art "central network equipment" in the form of "*a BaseT Ethernet hub*" has been the subject of the parties' arguments at every stage of this IPR from the Petition through the Oral Hearing. Under these circumstances, the Board acting on behalf of the Director should issue a final written decision in this IPR as to the amended claims because the subject of the claim amendment was addressed in this IPR and the prior art of record shows the claims are unpatentable under 35 U.S.C. § 103.

II. The Patent Owner Has Been on Notice that the Amended Claims Are Unpatentable Based on the Prior Art of Record in this IPR

Prior to the amendment, claim 73 recited, in part, “a piece of central network equipment” and “BaseT Ethernet.” Ex. 1001, cl. 73. To meet these limitations, the Petitioner relied on, among other things, disclosures of BaseT Ethernet hubs from both Hunter and the IEEE references in Grounds 1 and 2, respectively. Following the amendment, claim 73 additionally recites “the piece of central network equipment *is a BaseT Ethernet hub.*” Ex. 2056, 2. Because the disclosures of BaseT Ethernet hubs that were relied on in the Petition also teach this amendment, claim 73 remains unpatentable. The Patent Owner has been on notice of this throughout the IPR and the reexamination. The Patent Owner had the opportunity to and did address this argument and the prior art in its Response, and would not be denied Due Process if the Board issues a final decision as to the amended claims.

A. Grounds 1 and 2 Teach the Amendment to Claim 73

In Ground 1, the Petition at pages 26-27 cites to Hunter (Ex. 1003) for its disclosures of BaseT Ethernet central equipment, including Hunter’s express disclosure of a “10BaseT hub.” Paper 1 at 27 (quoting Ex. 1003 at 34:18). In addition, the discussions on pages 8-9, 22-24, 25-26, and 42 of the Petition are relevant. For example, pages 8-9 cite to Hunter’s disclosures of Ethernet hubs, including 10Base-T and 100Base-T Ethernet. Pages 22-24 address the combination of Bulan’s circuitry (Ex. 1004) with the Ethernet hubs taught by

Hunter. Pages 25-26 cite Hunter's repeated disclosures of Base-T Ethernet. And page 42 explains that claim 73's limitations are a subset of claim 1, which recites "a piece of central BaseT Ethernet equipment." Accordingly, the evidence relied on for claim 1 also shows claim 73 is unpatentable.

In Ground 2, the Petition at page 55 cites disclosures of BaseT Ethernet hubs from the IEEE references (Exs. 1006-1008). For example, the IEEE Base-T Ethernet Standards teach a "10Base-T Repeater," "100Base-T Repeater," and "Multi-Port Bridge." Paper 1 at 55 (quoting Ex. 1006 at 243, 267; Ex. 1007 at 27; Ex. 1008 at 303-304). At page 55, the Petition also cite evidence, including figures 29-1 and 29-2 from the IEEE standard, that show a network of "10Base-T Repeaters," "100Base-T Repeaters," and a "Multi-Port Bridge" that physically connect to multiple DTEs (data terminal equipment, such as PCs). Petition at 55 (citing Ex. 1008 at 303-304). These disclosures teach a "BaseT Ethernet hub" under its broadest reasonable interpretation. In addition, pages 43-48 and 49-55 of the Petition are relevant. For example, pages 43-48 discuss the control unit of the Bloch reference (Ex. 1005) and pages 51-55 discuss combining Bloch's control unit with the BaseT Ethernet hubs taught by the IEEE references (Exs. 1006-1008). Pages 49-51 discuss evidence from the IEEE references teaching Base-T Ethernet. And page 66 explains that the evidence for claim 1 shows claim 73 is unpatentable.

These pages of the Petition also cite Mr. Crayford who testifies that both

Grounds teach central BaseT Ethernet equipment and BaseT Ethernet hubs.

B. Patent Owner Had the Opportunity to and Did Respond to the Evidence Showing the Amendment to Claim 73 Is Unpatentable

For Ground 1, Patent Owner does not dispute that Hunter teaches “a piece of central network equipment.” In fact, Patent Owner writes “Hunter teaches a multimedia hub (120 in Figure 1) that uses isoEthernet interfaces.” Paper 26 at 15. On pages 37-41, 48, and 50-51 of the Response, Patent Owner repeatedly states that the disclosures in Hunter teach a piece of central network equipment that is a *hub*. For example, Patent Owner writes that the “left-hand ‘hub’” in Figure 2 of Hunter can be in “hub 120 of Figure 1” of Hunter. Response at 39. Patent Owner’s recreation of Hunter’s Figure 2 is also telling because it labels the central network equipment of Hunter as a “Hub.” Paper 26 at 37. The only disputed limitation relevant to the amendment is whether the hub is a BaseT hub. *See, e.g.*, Response at 34-35, 40-41, 45-47. But as shown in the Petition and Reply, there is no merit to this argument because Hunter expressly teaches 10BaseT Ethernet, 100BaseT Ethernet, and a “10Base-t hub.” *See, e.g.*, Petition, 8-9, 25-29; Reply, 11-12. This limitation also was addressed at the Oral Hearing. *See, e.g.*, Record of Oral Hearing Held August 31, 2017 at 9:20-10:1; 30:17-31:11; 131:8-15.

For Ground 2, Patent Owner does not even dispute the evidence Petitioner relied on for teaching a piece of central BaseT Ethernet equipment. Indeed, claim 1 recites “a piece of central BaseT Ethernet equipment” and Patent Owner does not

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