

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

D-LINK SYSTEMS, INC.,
Petitioner,

v.

CHRIMAR SYSTEMS, INC.,
Patent Owner.

Case IPR2016-01425 (Patent 8,155,012 B2)
Case IPR2016-01426 (Patent 9,019,838 B2)¹

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

WEINSCHENK, *Administrative Patent Judge.*

ORDER
Authorizing Reply to Preliminary Response
37 C.F.R. § 42.108(c)

¹ We exercise our discretion to issue this Order in each case using a joint caption. Unless otherwise authorized, the parties are not permitted to use a joint caption.

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I. INTRODUCTION

On November 1, 2016, Judges Easthom, Ward, Anderson, and Weinschenk held a telephone conference call with counsel for D-Link Systems, Inc. (“Petitioner”) and counsel for Chrimar Systems, Inc. (“Patent Owner”). A court reporter was present on the conference call. This Order summarizes statements made during the conference call. A more complete record may be found in the court reporter’s transcript, which is to be filed by Patent Owner as an exhibit.

II. ANALYSIS

Petitioner requested authorization to file a reply to Patent Owner’s Preliminary Response. Petitioner explained that, in the Preliminary Response, Patent Owner argues that the Petition fails to identify all of the real parties-in-interest. According to Petitioner, that portion of the Preliminary Response contains factual and legal errors that Petitioner could not have anticipated at the time the Petition was filed. Petitioner indicated that its reply, if authorized, would address those errors. Petitioner also indicated that it plans to submit additional evidence with the reply, including a declaration previously filed with a district court. Petitioner, however, did not know whether that declarant could be made available for a deposition. Patent Owner responded that Petitioner had not made a showing of good cause, as required to warrant a reply under 37 C.F.R. § 42.108(c). Patent Owner pointed out that the portion of the Preliminary Response that addresses the real party-in-interest issue only relies on information that was known to Petitioner at the time the Petition was filed.

After considering the respective positions of the parties, we find that good cause exists to grant Petitioner’s request to file a limited reply to the

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Preliminary Response. *See* 37 C.F.R. § 42.108(c). Specifically, to the extent the Preliminary Response contains alleged factual inaccuracies relating to the real party-in-interest issue, Petitioner could not have been expected to anticipate and address those alleged inaccuracies in the Petition. Petitioner, therefore, is authorized to file a 3-page reply by November 11, 2016. The scope of the reply is limited to addressing any alleged factual inaccuracies in the portion of the Preliminary Response that relates to the real party-in-interest issue. Petitioner may cite to evidence already of record in this case, but Petitioner may not submit any new evidence or testimony with the reply.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's request for authorization to file a reply to Patent Owner's Preliminary Response is *granted*;

FURTHER ORDERED that Petitioner may file a 3-page reply by November 11, 2016, in accordance with the instructions above; and

FURTHER ORDERED that no surreply is authorized.

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PETITIONER:

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PATENT OWNER:

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REISING ETHINGTON PC