

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CISCO SYSTEMS, INC.,  
Petitioner,

v.

TQ DELTA, LLC,  
Patent Owner.

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Cases  
IPR2016-01466 (Patent 8,611,404 B2)  
IPR2016-01760 (Patent 9,094,268 B2)<sup>1</sup>

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Before SALLY C. MEDLEY, TREVOR M. JEFFERSON, and  
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

CLEMENTS, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceedings  
37 C.F.R. § 42.5

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<sup>1</sup> This Order addresses the same issues in the above listed proceedings. Therefore, we issue one Order to be filed in all of the above listed proceedings. The parties, however, are not authorized to use this style of filing in subsequent papers.

IPR2016-01466 (Patent 8,611,404 B2)  
IPR2016-01760 (Patent 9,094,268 B2)

On September 13 and 22, 2017, counsel for Patent Owner requested a call to raise instances of improper new arguments or new evidence contained in Petitioner's Replies (IPR2016-01466, Paper 14; IPR2016-01760, Paper 15), filed August 23 and 25, respectively. Patent Owner seeks authorization to file a motion to strike and/or a sur-reply.

Patent Owner previously made a similar request in related proceedings involving the same parties. *See, e.g., Cisco Systems, Inc., et al. v. TQ Delta, LLC*, Case IPR2016-01020, Paper 21 (PTAB June 22, 2017); *Arris Group, Inc. v. TQ Delta, LLC*, Case IPR2016-01160, Paper 22 (PTAB August 1, 2017). In those cases, we denied Patent Owner authorization to file a motion to strike or a sur-reply, but we authorized Patent Owner to file an itemized listing of the arguments and evidence alleged by Patent Owner to be beyond the proper scope of a reply. *Id.* at 2. We do the same again here.

Patent Owner's request for authorization to file a motion to strike and/or a sur-reply is denied. Patent Owner is authorized, however, to file a paper, limited to two pages, which provides an itemized listing, by page and line number, of what statements and evidence in the Petitioner's Reply are deemed by Patent Owner to be beyond the proper scope of a reply. No argument is to be included in the contents of the submission.

Petitioner is authorized to file a responsive paper, limited to two pages, which provides an item-by-item response to the items listed in Patent Owner's submission. Each item in Petitioner's responsive paper should identify the part of Patent Owner's Response, by page and line number, to which the corresponding item enumerated by Patent Owner is provided as a

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response, if indeed that is the case. No argument is to be listed in the contents of the submission.

In its request for a call, Patent Owner argued that our recent practice of having the Patent Owner submit a list of sections of the reply that contain new arguments in lieu of having a call is not sufficient here, and cited *Ultratec, Inc. v. Captioncall, LLC*, 2017 WL 3687453 (Fed. Cir. Aug. 28, 2017) (“*Ultratec*”). As we explained in denying Patent Owner’s request for a call, *Ultratec* is distinguishable from these proceedings. In *Ultratec*, the patent owner was denied an opportunity to submit evidence. Here, even if we authorized the requested motion to strike, Patent Owner would not have an opportunity to submit new evidence. Thus, authorizing Patent Owner to file a short paper in lieu of a motion to strike does not deprive Patent Owner of an opportunity it would otherwise have had. Moreover, the panel is capable of determining whether new argument/evidence is outside the proper scope of a reply when writing the final written decision and, even without a call, the short paper authorized in this Order affords Patent Owner adequate opportunity to identify those portions it contends are outside the proper scope so that its concerns are entered into the record.

#### ORDER

Accordingly, it is

ORDERED that Patent Owner is authorized to submit a listing, as described above, no later than September 29, 2017; and

FURTHER ORDERED that Petitioner is authorized to submit a responsive paper, as described above, no later than October 6, 2017.

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