

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.
Petitioner,

v.

FATPIPE NETWORKS PRIVATE LIMITED,
Patent Owner.

Case IPR2017-01845 Patent 6,775,235 B2
Case IPR2017-01846 Patent 7,406,048 B2¹

Before STACEY G. WHITE and MICHELLE N. WORMMEESTER,
Administrative Patent Judges.

WHITE, *Administrative Patent Judge.*

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5(a) and 37 C.F.R. § 42.108(c)

¹ This Order employs a joint caption, as it is being entered in each of the identified proceedings. The parties may not use a joint caption unless authorized.

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On November 14, 2017, Petitioner sent an email to Trials@uspto.gov seeking a conference call to request authorization to file a Reply to Patent Owner's Preliminary Response. According to Petitioner, its Reply would address Patent Owner's arguments from the Preliminary Response regarding its alleged privity with another entity that may be time barred and issues surrounding whether the Petition should be denied under §§ 314, 325(d).

On November 15, 2017, a conference call was held with Judges White and Wormmeester, and respective counsel for the parties. During the call, Petitioner noted that it had initially addressed the issue of multiple petitions and its relationship with Viptela, however, it asserts that recent developments since the filing of its Petitions have caused it to seek additional briefing on these issues. Petitioner indicated that it sought to provide additional argument and evidence in light of the post-Petition designation of Section II.B.4.i. of the Decision in *General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisha*, Case IPR2016-01357 (Paper 19) (PTAB Sept. 6, 2017) as precedential. It also asserts that its acquisition of Viptela was completed post-Petitions. Patent Owner opposed on the grounds that the arguments were foreseeable and Petitioner has not demonstrated good cause of the additional briefing.

The rules applicable to *inter partes* review typically do not provide an opportunity for a petitioner to file a reply to a patent owner's preliminary response. Nevertheless, 37 C.F.R. § 42.108(c) states that a petitioner "may seek leave to file a reply to the preliminary response" and that "[a]ny such request must make a showing of good cause." In view of § 42.108(c), we may authorize a reply under our authority to "enter non-final orders to administer the proceeding." 37 C.F.R. § 42.5(a).

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Upon consideration of the positions of the parties, we find Petitioner has established good cause for further briefing. Therefore, we authorize Petitioner to file a Reply of no more than seven pages limited to addressing Patent Owner's arguments under §§ 314 and 325(d) and issues surrounding its relationship with Viptela. We also authorize Patent Owner, if it chooses, to file a Sur-Reply of no more than seven pages addressing Petitioner's Reply.

Accordingly, it is:

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

FURTHER ORDERED that Petitioner's Reply is limited to responding to Patent Owner's arguments regarding §§ 314, 325(d) and its relationship with Viptela;

FURTHER ORDERED that Petitioner's Reply is limited to a maximum of seven pages and may be filed no later than Wednesday, November 22, 2017;

FURTHER ORDERED that Patent Owner, at its option, may file a Sur-Reply responding to Petitioner's Reply;

FURTHER ORDERED that any such Sur-Reply is limited to the specific issues presented in Petitioner's Reply; and

FURTHER ORDERED that any such Sur-Reply is limited to a maximum of seven pages and if Patent Owner chooses to file a Sur-Reply, it shall file its Sur-Reply no later than Friday, December 1, 2017.

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