

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2018-00391
Patent 7,647,633 B2

Before, THOMAS L. GIANNETTI, MIRIAM L. QUINN, and
PATRICK M. BOUCHER, *Administrative Patent Judges*.

QUINN, *Administrative Patent Judge*.

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

Finjan, Inc. (“Patent Owner”) requested via email authorization to file a Sur-Reply to the Petitioner’s Reply by Due Date 4, which falls on January 30, 2019. Petitioner does not oppose the request.

On August 2018, the office issued a Trial Practice Guide Update. *See* 83 Fed. Reg. 38,989 (Aug. 13, 2018) (notifying the public of the updated “Trial Practice Guide” and its accessibility through the USPTO website: <https://go.usa.gov/xU7GP>). In particular, the Trial Practice Guide states that the sur-reply practice essentially replaces the previous practice of filing observations on cross-examination testimony. Trial Practice Guide, 14. Further guidance states that the sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness. Additionally, sur-replies should only respond to arguments made in reply briefs, comment on reply declaration testimony, or point to cross-examination testimony. *Id.* And a sur-reply may address the institution decision if necessary to respond to the petitioner’s reply. *Id.*

ORDER

- 1) We hereby modify the current Scheduling Order (Paper 8) and authorize Patent Owner to file a sur-reply in lieu of its observations on cross-examination testimony by Due Date 4.
- 2) The sur-reply shall be limited to the word limit for replies.
- 3) The sur-reply shall follow the guidelines discussed above and further explained in the Updated Trial Practice Guide.

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