

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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PALO ALTO NETWORKS, INC., FORTINET, INC., and  
WATCHGUARD TECHNOLOGIES, INC.

Petitioner,

v.

SELECTIVE SIGNALS, LLC,  
Patent Owner.

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Case IPR2018-00594  
Patent 8,111,629 B2

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Before KRISTEN L. DROESCH, MATTHEW R. CLEMENTS, and  
MELISSA A. HAAPALA, *Administrative Patent Judges*.

CLEMENTS, *Administrative Patent Judge*.

SCHEDULING ORDER

## A. DUE DATES

This order sets due dates for the parties to take action after institution of the proceeding. The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). A notice of the stipulation, specifically identifying the changed due dates, must be filed promptly. The parties may not stipulate to an extension of DUE DATES 6 and 7. Nor does stipulating to a different DUE DATE 4 modify the deadline, set in this Order, for requesting an oral argument.

In stipulating to different times, the parties should consider the effect of the stipulation on times to object to evidence (37 C.F.R. § 42.64(b)(1)), to supplement evidence (37 C.F.R. § 42.64(b)(2)), to conduct cross-examination (37 C.F.R. § 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony (*see* section B, below).

The parties are reminded that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,772 (Aug. 14, 2012) (Appendix D), apply to this proceeding. The Board may impose an appropriate sanction for failure to adhere to the Testimony Guidelines. 37 C.F.R. § 42.12. For example, reasonable expenses and attorneys' fees incurred by any party may be levied on a person who impedes, delays, or frustrates the fair examination of a witness.

### 1. INITIAL CONFERENCE CALL

The parties are directed to contact the Board within ten (10) business days of the entry of this Scheduling Order if there is a need to discuss proposed changes to the due dates set forth herein or proposed motions.

## 2. DUE DATE 1

The patent owner may file—

- a. A response to the petition (37 C.F.R. § 42.120), and
- b. A motion to amend the patent (37 C.F.R. § 42.121).

The patent owner must file any such response or motion to amend by DUE DATE 1. If the patent owner elects not to file anything, the patent owner must arrange a conference call with the parties and the Board. The patent owner is cautioned that any arguments for patentability not raised and fully briefed in the response will be deemed waived.

## 3. DUE DATE 2

The petitioner must file any reply to the patent owner's response and opposition to the motion to amend by DUE DATE 2.

## 4. DUE DATE 3

The patent owner must file any reply to the petitioner's opposition to patent owner's motion to amend by DUE DATE 3.

## 5. DUE DATE 4

- a. Each party must file any motion for an observation on the cross-examination testimony of a reply witness (*see* section C, below) by DUE DATE 4.
- b. Each party must file any motion to exclude evidence (37 C.F.R. § 42.64(c)) and any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 4.

6. DUE DATE 5

a. Each party must file any response to an observation on cross-examination testimony by DUE DATE 5.

b. Each party must file any opposition to a motion to exclude evidence by DUE DATE 5.

7. DUE DATE 6

Each party must file any reply to any opposition to a motion to exclude evidence by DUE DATE 6.

8. DUE DATE 7

The oral argument (if requested by either party) is set for DUE DATE 7.

The panel is available to hear oral argument, if requested, at the USPTO main office in Alexandria, Virginia, the Rocky Mountain Regional Office, in Denver, Colorado, or the West Coast Regional Office, in San Jose, California. If the parties have a preference with regard to the above-identified locations, the parties are directed each to state the preference in the party's request for oral argument, including whether the parties agree to a stated preference. The Board will set and identify the location in the order setting oral argument. The Board may not always be able to honor the parties' preference of hearing location due to the availability of hearing room resources and the panel's needs

B. CROSS-EXAMINATION

Except as the parties might otherwise agree, for each due date—

1. Cross-examination begins after any supplemental evidence is due. 37 C.F.R. § 42.53(d)(2).

2. Cross-examination ends no later than a week before the filing date for any paper in which the cross-examination testimony is expected to be used. *Id.*

#### C. OBSERVATION ON CROSS-EXAMINATION

Observations on cross-examination provides the parties with a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness because no further substantive paper is permitted after the reply. *See Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). No new evidence of any kind may be introduced with an observation, without prior authorization from the panel. An observation must be a concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit. Each observation should not exceed a single, short paragraph. The opposing party may respond to the observation. Any response must be equally concise and specific.

#### D. MOTION TO AMEND

Although the filing of a Motion to Amend is authorized under our rules, Patent Owner must confer with us before filing any Motion to Amend. 37 C.F.R. § 42.121(a). Patent Owner should contact the Board to request such a conference, if necessary, at least ten (10) business days before DUE DATE 1.

#### E. PROTECTIVE ORDER

No protective order has been entered in this proceeding. The parties are reminded of the requirement for a protective order when filing a motion to seal. 37 C.F.R. § 42.54. If the parties have agreed to a proposed

protective order, including the Standing Default Protective Order, 77 Fed. Reg. 48,756, App. B (Aug 14, 2012), they should file a signed copy of the proposed protective order with the motion to seal. If the parties choose to propose a protective order other than, or departing from, the default Standing Protective Order, they must submit a joint, proposed protective order, accompanied by a red-lined version based on the default protective order in Appendix B to the Board's Office Patent Trial Practice Guide.

#### F. DISCOVERY DISPUTES

The panel encourages parties to resolve disputes relating to discovery on their own and in accordance with the precepts set forth in 37 C.F.R.

§ 42.1(b). To the extent that a dispute arises between the parties relating to discovery, the parties shall meet and confer to resolve such a dispute before contacting the Board. If attempts to resolve the dispute fail, a party may request a conference call with the Board and the other party in order to seek authorization to move for relief.

In any request for a conference call with the Board to resolve a discovery dispute, the requesting party shall: (a) certify that it has conferred with the other party in a good faith effort to resolve the dispute; (b) identify with specificity the issues for which agreement has not been reached; (c) identify the precise relief to be sought; and (d) propose specific dates and times at which both parties are available for the conference call.

DUE DATE APPENDIX

INITIAL CONFERENCE CALL .....Upon Request

DUE DATE 1 ..... November 13, 2018

Patent owner's response to the petition

Patent owner's motion to amend the patent

DUE DATE 2 .....February 11, 2019

Petitioner's reply to patent owner's response to petition

Petitioner's opposition to motion to amend

DUE DATE 3 .....March 11, 2019

Patent owner's reply to petitioner's opposition to motion to amend

DUE DATE 4 ..... April 1, 2019

Motions for observations regarding cross-examination of reply  
witness

Motions to exclude evidence

Requests for oral argument<sup>1</sup>

DUE DATE 5 .....April 15, 2019

Responses to motions for observations

Oppositions to motions to exclude evidence

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<sup>1</sup> Although the parties may stipulate to a different date for DUE DATE 4 regarding the "Motion for observations regarding cross-examination of reply witness" and "Motions to exclude evidence," the parties may not stipulate to a different date for the filing of "Requests for oral argument."

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DUE DATE 6 .....April 22, 2019

Replies to oppositions to motions to exclude

DUE DATE 7 .....May 6, 2019

Oral argument (if requested)

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