

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 TECHNOLOGIES, LLC,  
Patent Owner.

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Case IPR2018-00594  
Patent 8,111,629 B2

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Before KRISTEN L. DROESCH, and CHRISTOPHER M. KAISER,  
*Administrative Patent Judges.*

DROESCH, *Administrative Patent Judge.*

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

A conference call was held on March 19, 2019, between counsel for the parties and Judge Droesch and Judge Kaiser. Counsel for Petitioner requested the conference call to seek authorization to file: (1) a sur-reply to Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Amend (Paper 30); (2) a motion to strike portions of Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Amend (Paper 30); and (3) a motion to strike portions of Patent Owner's Sur-reply to Petitioner's Reply (Paper 29).

Patent Owner does not oppose Petitioner's request for authorization to file a sur-reply to Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Amend. Patent Owner, however, opposes Petitioner's request for authorization to file the motions to strike.

As to the request for authorization to file a motion to strike portions of Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Amend, Petitioner asserts the Appendix of Patent Owner's Reply is not responsive to the Opposition, and is improperly single-spaced. Petitioner requests five pages for its motion to strike. Patent Owner opposes Petitioner's request, arguing that the Appendix is responsive to arguments raised in the Opposition. Patent Owner contends Petitioner's request for five pages is excessive to address a one-page appendix.

Regarding the request for authorization to file a motion to strike portions of portions of Patent Owner's Sur-reply to Petitioner's Reply, Petitioner contends that Patent Owner untimely filed twelve additional exhibits, which were not responsive to Petitioner's Reply. Petitioner further

asserts that arguments in the Sur-Reply addressing claim 19 were waived because Patent Owner did not address claim 19 in its Patent Owner Response. Petitioner requests ten pages for its second motion to strike. Patent Owner argues that the exhibits and arguments in the Sur-Reply were responsive to the Reply. Patent Owner also objects to Petitioner's request for ten pages.

Based on the representations during the call, Petitioner is authorized to file a sur-reply to Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Amend, limited to twelve pages, by Due Date 4.

As discussed in the Trial Practice Guide Update ("TPG Update"),

In most cases, the Board is capable of identifying new issues or belatedly presented evidence when weighing the evidence at the close of trial, and disregarding any new issues or belatedly presented evidence that exceeds the proper scope of reply or sur-reply. As such, striking the entirety or a portion of a party's brief is an exceptional remedy that the Board expects will be granted rarely.

83 Fed. Reg. 39,989, <https://go.usa.gov/xU7GP> at 8–13 (Aug. 2018). For these reasons, we deny Petitioner's requests to file motions to strike.

We, however, authorize Petitioner to file a single paper entitled "Petitioner's Notice of Improper Arguments and Evidence" to address Petitioner's concerns with the scope of both Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Amend and Patent Owner's Sur-reply to Petitioner's Reply. Petitioner's Notice is not to exceed ten pages and must be filed by Due Date 4. Patent Owner is authorized to file a response to Petitioner's Notice, responsive only to the issues raised in

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Petitioner's Notice. Patent Owner's response is not to exceed ten pages and must be filed by Due Date 5.

#### ORDER

Accordingly, it is

ORDERED that Petitioner is authorized to file a sur-reply to Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Amend , limited to twelve pages, by Due Date 4;

ORDERED that Petitioner is authorized to file a single paper entitled "Petitioner's Notice of Improper Arguments and Evidence," limited to ten pages, by Due Date 4; and

Ordered that Patent Owner is authorized to file a response to Petitioner's Notice, limited to ten pages, by Due Date 5.

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