

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 April 24, 2019, between counsel for the parties and Judge Droesch and Judge Kaiser. Counsel for Petitioner requested the conference call to seek authorization to late-file its Sur-reply to Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Amend.

Counsel for Petitioner indicates that it served its Sur-Reply on Patent Owner on April 1, 2019, but that the Sur-Reply was not properly filed in the PTABE2E system. Counsel for Petitioner further indicates that Petitioner did not learn that the Sur-Reply was not properly filed until Patent Owner filed on April 16, 2019, its Response to the Petitioner's Notice of Improper Arguments (Paper 38), which pointed out Petitioner's failure to file. Counsel for Petitioner asserts that Patent Owner was not prejudiced because the Sur-Reply was timely served on Patent Owner.

Patent Owner opposes Petitioner's request. Counsel for Patent Owner requests, in the event Petitioner is authorized to late-file its Sur-Reply, authorization to amend its Response to Petitioner's Notice of Improper Arguments.

Contingent on a denial of Petitioner's request to late-file its Sur-Reply, Petitioner also seeks authorization to strike Patent Owner's late-filed Response to Petitioner's Notice of Improper Arguments (Paper 37) and late-filed Opposition to Petitioner's Motion to Exclude Patent Owner's Evidence (Paper 38). Counsel for Patent Owner indicates that its papers were filed a few minutes after the deadline and contends that Petitioner was not prejudiced by the late-filed papers.

In the interest of a fully developed trial record, and because neither party was prejudiced by the late-filed papers, Petitioner's request to late-file its Sur-reply to Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Amend is *granted*. Patent Owner's corresponding request to file an Amended Response to Petitioner's Notice of Improper Arguments also is *granted*. Patent Owner's amended Response is limited to 10 pages, and is due no later than April 30, 2019. Petitioner's contingent request for authorization to strike Patent Owner's Response to Petitioner's Notice of Improper Arguments (Paper 37) and Opposition to Petitioner's Motion to Exclude Patent Owner's Evidence (Paper 38) is *denied*.

We remind the parties that Patent Owner's Response to Petitioner's Notice of Improper Arguments should only be responsive to its corresponding paper, that is, Petitioner's Notice of Improper Arguments. The Response to Petitioner's Notice of Improper Arguments is not an opportunity to address arguments raised in other papers. Any arguments in the Response that are not responsive to Petitioner's Notice of Improper Arguments may not be considered.

#### ORDER

Accordingly, it is

ORDERED that Petitioner is authorized to late-file its Sur-reply to Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Amend; and

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ORDERED that Patent Owner is authorized to file an amended Response to Petitioner's Notice of improper arguments, limited to ten pages, by April 30, 2019.

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