

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVI NETWORKS, INC.,
Petitioner,

v.

CITRIX SYSTEMS, INC.,
Patent Owner.

Case IPR2019-00844 (Patent 8,631,120 B2)
Case IPR2019-00845 (Patent 9,148,493 B2)¹

Before JUSTIN T. ARBES, PATRICK M. BOUCHER, and
FREDERICK C. LANEY, *Administrative Patent Judges*.

LANEY, *Administrative Patent Judge*.

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

¹ We exercise our discretion to issue one Order to be filed in each proceeding. The Parties, however, are not authorized to use this style heading in any subsequent papers.

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A conference call in the above proceedings was held on August 9, 2019, among respective counsel for Petitioner and Patent Owner, and Judges Arbes and Laney.² The call was requested by Petitioner to seek leave to file an eight-page reply to Patent Owner's Preliminary Response in each proceeding. Petitioner argued that it should be allowed to reply to two arguments made in Patent Owner's Preliminary Response—namely, (1) the Board should exercise its discretion under Section 314(a) to deny institution, and (2) the petition is deficient because it relies on four source code files from the entire Squid source code base. Petitioner asserts a reply is necessary because it could not have reasonably anticipated that Patent Owner would have raised the above two issues while preparing its Petitions. Patent Owner opposes Petitioner's request because Petitioner has not shown an affirmative reason why a reply is warranted and because Petitioner should not be given a second chance to improve its Petition. Patent Owner contends that the Section 314(a) issue addresses the timing of the Petition as it relates to the parallel litigation, which Petitioner was well aware of prior to the filing of the Petition. Regarding the source code issue, Patent Owner contends that it pertains to what the underlying supporting documents themselves teach or do not teach, which the Board is able to decide on its own. We took the matter under advisement.

Upon further consideration and review of the materials cited by the parties, we determine that Petitioner has not demonstrated good cause for a reply. *See* 37 C.F.R. § 42.108(c). In particular, the instant facts appear to be no different than a typical proceeding in which a patent owner in its preliminary response asserts that arguments made in a petition are incorrect

² A court reporter was not present for this call.

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or deficient, and the petitioner disagrees. A reply is not warranted in every case—only when a petitioner can make a showing of good cause. *See id.* Here, we are able to determine the substance of what Petitioner argues in the Petitions and evaluate the teachings of the references cited by Petitioner, without additional briefing from the parties. Furthermore, Petitioner does not suggest that any intervening events that would affect the Section 314(a) issue have occurred between the time it filed the Petitions and the date of our call.

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner’s request to file a reply to Patent Owner’s Preliminary Response in each of the instant proceedings is *denied*.

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