

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYNAFFIX B.V.,
Petitioner,

v.

HANGZHOU DAC BIOTECH CO., LTD.,
Patent Owner.

IPR2022-01531
Patent 10,131,682 B2

Before ZHENYU YANG, DEVON ZASTROW NEWMAN, and
CYNTHIA M. HARDMAN, *Administrative Patent Judges*.

NEWMAN, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
Authorizing Filing of Additional Evidence and Briefing
Declaration
37 C.F.R. § 42.5

On March 31, 2025, the parties to this proceeding emailed the Board regarding a joint request for entry of an order to resolve a dispute between them. *See* Ex. 3005. The dispute involves certain arguments and evidence that Petitioner included in Petitioner’s Reply to Patent Owner Response (Paper 36 (“Reply)). Patent Owner believes these arguments and evidence, identified as “presented in Exhibits 1064 (Dondoni), Exhibit 1065 (Wang), paragraphs 6–11 of Exhibit 1076 (Reply Declaration of Dr. Chari), and Petitioner’s reply at pages 14–15 under caption A and sub-caption 1 regarding Petitioner’s Ground 1” (hereafter “the disputed arguments and evidence”), which address Patent Owner’s proposed construction of the claim term “Y,” “are untimely and improper for a reply.” *See* Ex. 3005. Petitioner disagrees. *Id.*

Following a conferral between the parties on this issue, the parties reached an agreement that would prevent Patent Owner from seeking to file a motion to strike the disputed arguments and evidence. *See* Ex. 3005. The parties’ proposal, which they request that we approve and commemorate with entry of an order, is as follows:

1. Patent Owner is permitted to submit with its sur-reply, “additional evidence including [an] expert declaration” to address the disputed arguments and evidence.
2. Petitioner is permitted to (1) cross-examine Patent Owner’s declarant on any new expert declaration submitted with the sur-reply, and (2) submit a sur-sur-reply of no more than 5 pages to address Patent Owner’s additional evidence and related arguments in the sur-reply.

See Ex. 3005. The parties further propose that Petitioner's deposition of Patent Owner's declarant will be limited to the scope of the new expert declaration, if submitted, and that Petitioner's sur-sur-reply will be limited to addressing the new evidence presented with Patent Owner's sur-reply and will not introduce new evidence except for any deposition transcript of Patent Owner's declarant. *Id.* The parties cite *Axonics, Inc. v. Medtronic, Inc.*, 75 F.4th 1374, 1383–84 (Fed. Cir. 2023) in support of their joint proposal, asserting that the parties should be permitted to address the claim construction issue arising from Petitioner's inclusion of the disputed evidence and arguments in response to Patent Owner's proposed claim construction position in Patent Owner's Response. *Id.*

Upon consideration of the issue raised by the parties, we agree that the requested briefing is appropriate, to permit the Petitioner to address Patent Owner's claim construction argued in its Patent Owner Response, and to permit Patent Owner to address Petitioner's arguments. *Axonics*, 75 F.4th at 1383–84.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner is authorized to include with its sur-reply, a declaration and supporting evidence to address the disputed arguments and evidence submitted by Petitioner;

FURTHER ORDERED that Petitioner is authorized to cross-examine Patent Owner's declarant on the contents of the new expert declaration and supporting evidence, if submitted; and

FURTHER ORDERED that Petitioner is authorized to file, on or before May 16, 2025, a sur-sur-reply that shall not exceed 5 pages that is

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limited to addressing the new evidence presented with Patent Owner's sur-reply. In this sur-sur reply, Petitioner may not introduce new evidence other than the deposition transcript of Patent Owner's declarant.

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