

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIKING DRILL & TOOL, INC.,
Petitioner,

v.

HONGJIA WANG,
Patent Owner.

IPR2023-00473 and IPR2023-00474
Patent 11,007,583

Before WILLIAM V. SAINDON, JAMES J. MAYBERRY, and
CYNTHIA L. MURPHY, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

ORDER
Granting Petitioner's Motion to Strike
Ordering Patent Owner to Show Cause
37 C.F.R. §§ 42.5, 42.12

I. INTRODUCTION

We authorized Petitioner to file a Motion to Strike certain aspects of Patent Owner's Response. Paper 36 (Board Order authorizing motion); Paper 37 (Petitioner's Motion to Strike, hereinafter "Motion" or "Mot.").¹ Petitioner's basic complaint, addressed in greater detail below, is that under cover of correcting clerical errors, Patent Owner supplemented and revised material after the filing date without notice to Petitioner or the Board. Upon review of the Motion and Patent Owner's Opposition (Paper 39, hereinafter "Opposition" or "Opp."), we *grant* Petitioner's Motion. We additionally find that Patent Owner's lead attorney has violated a Board order and repeatedly violated Board rules and procedures, and we order Patent Owner to show cause why it should not be sanctioned for misconduct.

A. Background and Timeline of Events

Upon review of the record, we make the following findings. Patent Owner's Response was initially due October 3, 2023. Paper 14 at 11 (Scheduling Order). After two stipulations, Patent Owner's Response came due October 31, 2023. Papers 20, 22.

Patent Owner's counsel's paralegal asserts that she begin uploading the contents of Patent Owner's Response around 11:30 PM (ET) on October 31, 2023. Ex. 2113 ¶¶ 2–3.² Emails from PTAB's PTACTS filing system to the parties indicate that the Response and associated documents were filed the next day, beginning on or around 12:23 AM (ET) until on or around

¹ We provide citations to papers in IPR2023-00473. The reader may assume a substantively similar citation exists in IPR2023-00474. We will attempt note any differences of which we are aware.

² We have converted all times to Eastern Time.

12:38 AM (ET) of November 1, 2023. Ex. 2116. Patent Owner’s counsel’s paralegal asserts that the uploading process was slowed down by “several documents that took several minutes to upload,” allegedly including three video files, Exhibits 2050, 2053, and 2054, “that were too large to upload.” Ex. 2113 ¶ 3. She asserts that she was not aware of the system’s upload capacity and had just learned of it on January 3, 2024 when she “received an email response from the PTAB AIA Trials department.” *Id.* She also asserts that, “[d]ue to the memory size issue, there was some delay in figuring out how to proceed with uploading and filing the necessary papers for the client.” *Id.*

On the morning of November 1, 2023, Petitioner emailed counsel for Patent Owner an objection under 37 C.F.R. § 42.6(e), asserting that Patent Owner never served its response on Petitioner. Ex. 1039, 4–5. Petitioner noted that, although Patent Owner’s Response (presumably, in the copy residing in PTAB’s system at the time) certified that Patent Owner served Petitioner on “this 31st day of October, 2023, by electronic mail on Petitioner’s lead counsel,” no such service occurred. *Id.* Patent Owner did not deny failure of service in a subsequent email later that morning, in which attachments and links to documents were provided. *Id.* at 3–4; *see also* Opp. 3 (asserting that Petitioner was served by 1:24 PM (ET) on November 1, 2023) (citing Ex. 2107 (a partial copy of Ex. 1039) and Ex. 2108 (a partial copy of Ex. 1039 as well as a partial copy of Ex. 2107)). Petitioner then notified Patent Owner’s counsel that the declaration of its expert (Exhibit 2034) appeared to be missing paragraphs and that the Response included citations to nonexistent paragraphs, and asked for service of “complete and accurate” papers. Ex. 1039, 2.

On November 1, 2023, at 11:42 AM (ET), the Board notified the parties that Patent Owner's late submissions filed earlier that day had been expunged for being "in violation of at least 37 CFR 42.6(a)(2), (a)(3), and (d) as well as footnote 1 of the Scheduling Orders." Ex. 1037, 3; *see also* 37 C.F.R. § 42.7(a) ("The Board may expunge any paper directed to a proceeding . . . that is not authorized under this part or in a Board order or that is filed contrary to a Board order"). The violations included using unauthorized font and spacing (Rule 42.6(a)(2)), combining papers (Rule 42.6(a)(3)), refiling already-filed papers or exhibits (Rule 42.6(d)), as well as an additional order, in light of Patent Owner's earlier citations in its Patent Owner Preliminary Response to self-styled exhibit names instead of exhibit numbers, for the parties to provide descriptive exhibit names (Paper 14, n.1).³

On November 3, the 2023, Petitioner contacted the Board to ascertain when it must file its objections to Patent Owner's evidence, given that the Board had recently expunged it. Ex. 1037, 2. Petitioner also noted to the Board that Patent Owner's expert declaration appeared to be incomplete, missing a large number of paragraphs, and also that the declaration was the

³ Patent Owner appears to believe that its Rule 42.6(a)(3) violation was with respect to its expert declaration, Exhibit 2034. *See, e.g.*, Opp. 1 ("Mr. Wang was required to remove the paragraphs from the declarations of his expert witness . . . that relate only to his response to [Petitioner's] other petition for IPR."). We had not reviewed Exhibit 2034 prior to the documents being expunged. Instead, it was Patent Owner's Motion to Seal (Paper 26) that was identified as in violation of the Rule, because it includes both a motion as well as proposed redacted papers, which should instead be filed as separate papers or exhibits. Patent Owner's newly filed Motion to Seal (Paper 30) remains in violation of Rule 42.6(a)(3).

same in both proceedings and Petitioner was unsure if this was a mistake.
Id.

On November 4, 2023, Patent Owner's counsel emailed Petitioner's counsel a new declaration of its expert, Dr. Endres. Mot. 3; Ex. 2112 ¶ 13. This declaration was not filed with the Board. Ex. 2112 ¶ 13.

On November 6, 2023, the Board notified the parties that Petitioner was not required to file its objections until Patent Owner re-files and re-serves its evidence. Ex. 1037, 1.

On November 7, 2023, Patent Owner filed a Corrected Patent Owner Response and associated papers and exhibits. Exhibit 2034 contained new paragraphs 108–120 in IPR2023-00473 and new paragraphs 52–107 in IPR2023-00474, and Patent Owner's Responses contained citations to these paragraphs (*see, e.g.*, Paper 28 at 32 (citing Ex. 2034 ¶ 110)). These paragraphs correspond to the paragraphs Petitioner had previously identified as missing. Ex. 1037, 2; Ex. 1039, 2.

On November 21, 2023, Petitioner deposed Patent Owner's expert, Dr. Endres. During the deposition, it came to light that on or before October 31, 2023, Dr. Endres refused to adopt certain positions that Patent Owner wished him to take in his declaration. Ex. 2112 ¶¶ 5–6 (Declaration of Kelly Cunningham, Patent Owner's lead counsel). In the words of Dr. Endres:

On October 31st there was a large section of information of the original draft that [Patent Owner's counsel] had provided for me to work with, and there was material there that had some technical misinterpretations that needed fixing, actually removing, and there was also a fair amount of legal language that I'm not capable of signing to; and there was not time once I noticed that for those to be resolved, so it was submitted with, I'm going by memory here, with that material removed.
Ex. 1035, 20:24–21:9.

With its expert refusing to sign the declaration because of the offending passages, Patent Owner’s counsel appears to have removed this material, allowing Dr. Endres to subsequently sign the version that was submitted on November 1, 2023. *Id.*; *see also* Ex. 2112 ¶ 7. Accordingly, whereas Petitioner initially thought that Patent Owner’s declaration filed on November 1, 2023 was incomplete, it turned out that that material was deliberately withheld because Patent Owner’s expert did not agree with the substance. Mot. 4 (“This was the first time that [Petitioner] learned that the new paragraphs . . . contain substantive revisions made after the initial filing rather than correction of an omission.”). Based on the statements of Patent Owner’s counsel, in the time frame between Patent Owner’s initial filing on November 1st, and its revised filing on November 7th, Patent Owner and its expert worked to make alterations to the rejected portions of the declaration in order to put it in a condition that Dr. Endres was willing to sign. Opp. 3–4; Ex. 2112 ¶¶ 9, 10, 12; *see also* Ex. 1035, 19:18–20:6 (Dr. Endres testifying that his October 31st declaration was “incomplete” but that he signed a completed one on November 4th, and then later re-signed another copy on the 6th). The copy of Exhibit 2034 filed in these proceedings, therefore, was developed after the deadline for filing Patent Owner’s Response had passed.

In addition, on November 28, 2023, Petitioner deposed another of Patent Owner’s declarants, David Fisher. Mr. Fisher testified to having only seen a few days prior to his deposition the copy of the corrected declaration (Ex. 2036) bearing his signature. Ex. 1036, 16:10–11 (“I happen to have

printed out the slightly different version.”).⁴ Further, when questioning Mr. Fisher about Exhibit 2050, discussed in his declaration, Petitioner noted that it had never been served copy of that exhibit. *Id.* at 82:19–83:5, 108:13–24. Exhibits 2050, 2053, and 2054, referenced in Mr. Fisher’s declaration, had not been filed with the Board either. Mot. 7. Later that day, Patent Owner served Exhibits 2050, 2053, and 2054 on Petitioner. Mot. 5 (citing Ex. 1043).

On December 6, 2023, Petitioner requested a call with the Board to seek authorization to file a motion to strike, which we authorized. Paper 36.

On January 2, 2024, Patent Owner’s paralegal reached out to the Board, two months after the documents allegedly failed to upload, and was immediately notified of the 25 MB limit of the system and how to work around it. Ex. 3001.⁵

B. The Parties’ Positions

We have reviewed the entirety of both parties’ briefs. We provide a high-level overview of the parties’ positions. Petitioner requests that we strike paragraphs 108–120 of Exhibit 2034 (new positions taken by Dr. Endres after the Response was filed), Exhibits 2050, 2053, and 2054 (video

⁴ Petitioner does not allege that substantive revisions have been made, only that the corrected version is different, which it indisputably is. *See* Ex. 2036, n.2 (“The Declaration has been revised to correct formatting only.”).

⁵ PTAB’s website has a frequently asked questions document explaining the 25 MB limit of the system and how to work around it. *See Patent Trial and Appeal Case Tracking System Frequently Asked Questions -- A8 What is the megabyte limit for a document upload?* (Oct. 7, 2022) (available at https://www.uspto.gov/sites/default/files/documents/p-tacts_faqs_20221007.pdf).

exhibits not filed with the Board), paragraphs 43, 49, and 51 of Exhibit 2036 (testimony of Mr. Fisher regarding unfiled video exhibits), as well as the portions of Patent Owner’s Corrected Response that rely thereupon. Mot. 7.⁶ Petitioner asserts that striking “improperly and misleadingly filed material is the appropriate sanction against Patent Owner in this instance” because Patent Owner “has repeatedly violated the Board’s orders, has filed untimely material without seeking permission, and was not forthright when submitting untimely material.” *Id.* at 7–8. Petitioner also asserts that it has been prejudiced by Patent Owner’s behavior, and that striking the offending material will “deter parties from ignoring the Board’s rules and engaging in misleading conduct and to remedy the prejudice.” Mot. 8; *see also id.* at 8–12 (more detailed argument).

Patent Owner asserts that good cause exists for its late filings because Dr. Endres’s updated declaration merely “corroborate[s] arguments that were already contained in [Patent Owner’s] original response to petition.” Opp. 6. Patent Owner asserts that the updated declaration was only a week late, and was served well in advance of his deposition. *Id.* at 7–9. Regarding the video exhibits, Patent Owner asserts that the Board’s system would not accept them due to their size, and that Patent Owner is presently in the process of filing them. Opp. 9–10.

⁶ In IPR2023-00474, the request to strike is the same except the specific paragraphs requested to be struck in Exhibit 2034 are paragraphs 52–107. IPR2023-0474, Paper 39, 7.

II. ANALYSIS

Our Consolidated Trial Practice Guide⁷ (“CTPG”) states that a motion to strike may be an appropriate vehicle when a brief “is accompanied by belatedly presented evidence.” CTPG 80–81. Reviewing the facts established above, we determine that Petitioner’s motion has merit. Even if motions to strike are “an exceptional remedy that . . . will be granted rarely,” *id.* at 80, we determine that Patent Owner’s actions are exceptional and warrant the remedy.

A. Newly Added Paragraphs in Dr. Endres’s Declaration

On November 1, 2023, we ordered Patent Owner to refile its Response and associated papers⁸ to fix formatting errors (e.g., font, spacing, improperly combined documents). Ex. 1037, 3 (“Patent Owner’s submissions on 11/1/23 are in violation of at least 37 CFR 42.6(a)(2), (a)(3), and (d) as well as footnote 1 of the Scheduling Order.”). Specifically, we ordered the improper papers to be “refiled in accordance with Board Orders and Rules.” *Id.* The order was directed to the correction of formatting issues, not an authorization to file a new set of papers and exhibits containing substantive modifications and improvements.

Nevertheless, on November 7, 2023, Patent Owner filed Exhibit 2034 (declaration of Dr. Endres) containing paragraphs 108–120 that were not present in the original November 1, 2023 filing.⁹ The addition of these new

⁷ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>

⁸ For brevity, we will use the word “Response” to include those papers and exhibits filed with the Response.

⁹ In IPR2023-00474, Patent Owner added paragraphs 52–107 to Exhibit 2034.

paragraphs, presenting evidence never presented on November 1, 2023, constitutes a substantive change to the declaration. Patent Owner argues that the new paragraphs merely corroborate its prior arguments. Opp. 6.

Evidence is required to support an attorney argument, however, so providing evidence is a requisite component of a party's position. *Meitzner v. Mindick*, 549 F.2d 775, 782 (CCPA 1977) ("Argument of counsel cannot take the place of evidence lacking in the record."). Even if it were true that Patent Owner's overall theory was not new, the evidence was new.

We hold that Patent Owner substantively altered the contents of its Response after the October 31, 2023 due date without authorization. We agree with Petitioner that it has faced prejudice from Patent Owner's tactics of using Petitioner's reply period to bolster its own position, and by forcing them to confront shifting, supplemental arguments presented after the filing deadline. Mot. 10. We grant Petitioner's request to strike the paragraphs added to Exhibits 2034 after the deadline for submission. Likewise, we grant Petitioner's request to strike the portions of Patent Owner's Corrected Response relying on these paragraphs. To be clear, we strike specifically the citations in the Response to the evidence that has, in turn, been stricken. We will consider other evidence cited to the extent any exists.

B. Failure to Serve and to File Documents Timely

Patent Owner failed to timely serve the Patent Owner Response on Petitioner. In its original response, Patent Owner certified under Rule 42.6(e) that its Response was "served in its entirety this 31st day of October 2023, by electronic mail." Ex. 1032, 37 (Patent Owner's expunged response). It is not disputed that Patent Owner did not serve its Response on October 31, 2023. Even setting aside Patent Owner's issues attempting to

file late on October 31st, resulting in most documents filed on November 1st, Patent Owner did not serve its Response on Petitioner once it had completed its filings, despite having certified to doing so. Instead, Petitioner had to remind Patent Owner of its duty to serve the Response. *See, e.g.*, Ex. 1039, 4–5 (Petitioner requesting service via email). Even then, Patent Owner failed to serve the entirety of its response. Ex. 1043 (not serving certain video exhibits until November 28, 2023). Specifically, Exhibits 2050, 2053, and 2054 (the video exhibits), were not served until after the deposition of Mr. Fisher, whose testimony relies on those exhibits. *See, e.g.*, Ex. 1036, 82:20–21 (Petitioner’s counsel stating during the deposition of Mr. Fisher that they “don’t have a copy of Exhibit 2050”); *see also* Ex. 1043 (Patent Owner sending a copy to Petitioner the same day). Patent Owner did not enter the exhibits with the Board.

Patent Owner’s assertion that the file size is to blame is unpersuasive, and certainly no excuse for its failure to serve Petitioner. Our website explains what to do with large file sizes, *supra* n. 5, and it is instead Patent Owner’s failure to prepare its Response with sufficient time to spare that led to its problems. Further, Patent Owner did not even reach out to the Board to ask how to upload videos until two months after the exhibits allegedly failed to upload. Ex. 3001. On whole, the blame for the late filings (and non-filings) lies squarely with Patent Owner.

We again agree with Petitioner that it has been prejudiced by Patent Owner’s actions. *See* Mot. 10. Specifically, Patent Owner had not served Petitioner with Exhibits 2050, 2053, and 2054 on the due date of the Response, on the date Patent Owner actually filed its Response, on the date Patent Owner filed its Corrected Response, or at any time before the

deposition of Mr. Fisher at which these exhibits were discussed.

Accordingly, we grant Petitioner's request to strike Exhibits 2050, 2053, and 2054, as well as paragraphs 43, 49, and 51 of Exhibit 2036 which rely thereon. Technically, because Exhibits 2050, 2053, and 2054 were never actually filed, we do not strike them; we instead preclude Patent Owner from entering or relying on them as evidence in support of its Response.

C. Conclusion for Motion to Strike

Patent Owner substantively modified Exhibit 2034 after the deadline to submit its Response and did not file Exhibits 2050, 2053, and 2054 or serve them in a reasonable timeframe. For the reasons expressed above, striking the modified portions of Exhibit 2034, and Exhibits 2050, 2053, and 2054 in their entirety, is an appropriate remedy. Accordingly, Petitioner's Motion to Strike is *granted*.

III. SANCTIONS

We have stricken from the record the evidence untimely filed by Patent Owner. However, the modifications to Exhibit 2034 (declaration of Dr. Endres) were not only untimely, but in violation of our order. In addition, Patent Owner has repeatedly violated other rules and procedures. We next turn to whether the violation of our order and the repeated violations of our rules and procedures warrant sanctions.

The Board's rules provide for sanctions for failure to comply with a rule or order, for misrepresentation of fact, for abuse of process, and for any other improper use of the proceeding, including actions that cause unnecessary delay or increase in the cost of the proceeding. 37 C.F.R. § 42.12(a). The USPTO Director has made clear that "[f]ailure to comply

with an order is sanctionable.” *Patent Quality Assurance, LLC v. VLSI Tech. LLC*, IPR2021-01229, Paper 102 at 23 (PTAB Dec. 22, 2022) (precedential).

A. Violation of a Board Order

As explained earlier in this Order, Patent Owner’s Corrected Response substantively supplemented and revised material in its Response under cover of addressing formatting or clerical issues, adding nearly 70 paragraphs of new testimony between the two proceedings. We find that Patent Owner’s violation of our order was willful and egregious. In particular, we find that Patent Owner knowingly sought to supplement the November 1, 2023 filings. Ex. 1035, 20:7–9, 20:24–21:12; Ex. 2112 ¶¶ 7, 9, 10, 13, 14. Patent Owner did not inform or request permission from the Board or Petitioner to supplement the November 1, 2023 filings. Given the clear violation of our order by deliberately making substantive changes under cover of correcting formatting issues, we are considering sanctions. 37 C.F.R. § 42.12(a)(1) (sanctions appropriate for violating orders).

B. Unnecessary Delay and Increase in Costs

The consequences of Patent Owner’s improper supplementation has directly led to increased costs to the Board and Petitioner, and has delayed Petitioner’s ability to file its Reply. Mot 10 (“Patent Owner’s actions have cut into Petitioner’s already truncated time to respond”). Further, Patent Owner has repeatedly violated Board rules and procedures, leading to increased administrative costs to the Board in order to research and remediate the problem. For example:

- i. Patent Owner’s counsel signed the original Patent Owner Preliminary Response without using a USPTO registration number

- and with the designation “*pro hac vice*.” Paper 7, 30. This required PTAB staff to investigate whether Patent Owner’s counsel was in fact a registered practitioner and whether a *pro hac vice* motion had been filed, ultimately leading to Patent Owner filing a Corrected Preliminary Response (Paper 9). *See also* 37 C.F.R. § 42.10(c) (requiring “lead counsel be a registered practitioner”).
- ii. Patent Owner did not designate backup counsel; PTAB staff were required to request Patent Owner to file appropriate documentation designating backup counsel. Compare Paper 6 with Paper 8 (adding backup counsel); *see also* 37 C.F.R. § 42.10(a) (“the party must designate a lead counsel and at least one back-up counsel”).
 - iii. Patent Owner Response’s used unauthorized font and spacing. *See generally* Exhibit 1032 (copy of Patent Owner’s expunged response); *see also* 37 C.F.R. § 42.6(a)(2) (setting out formatting requirements).
 - iv. Patent Owner’s Motion to Strike improperly combined a motion with exhibits. *See generally* Paper 30 (the re-filed Motion to Seal, which contains the same error); *see also* 37 C.F.R. § 42.6(a)(3) (prohibiting combined documents).
 - v. Patent Owner has refiled already-filed papers or exhibits, for example Exhibit 2107 appears to be an excerpt of Exhibit 2108, both of which are a copy or excerpt of Exhibit 1039. 37 C.F.R. § 42.6(d) (prohibiting the filing of a previously filed paper).
 - vi. Patent Owner did not adhere to our order for the parties to provide descriptive exhibit names (to facilitate matching exhibit numbers with such names in the briefs). Paper 14, n.1.
 - vii. Patent Owner’s 10 exhibits filed in support of its Opposition do not identify the trial number (37 C.F.R. §§ 42.6(a)(4), 42.63(d)(1)(ii)), nor do they have exhibit labels identifying the party name, exhibit number, or page number (§ 42.63(a)(d)).

The sheer quantity of violations, of which the above are just a sample, demonstrates a pattern of conduct that causes unnecessary delay and increase in the costs of the proceeding. Formalities and deadlines are

important because they help the efficient and inexpensive administration of the proceedings. *See Dealersocket, Inc. v. Autoalert LLC*, CBM2014-00142, Paper 10 at 9 (PTAB Sept. 8, 2014) (sanctioning a party for missing deadlines because, among other reasons, it presents “a moving target” for the other party). The Board cannot simply spend indefinite resources reviewing a party’s papers for compliance and having them refile. *See Euro-Pro Operating LLC v. Acorne Enterprises, LLC*, IPR2014-00351, Paper 35 at 3 (PTAB Feb. 13, 2015) (sanctioning a party that repeatedly “inconvenienced the panel, Board staff, and/or opposing counsel” with various violations). Further, the rules are put in place not merely to provide a consistent presentation to the judges and parties, but also to help identify documents, prevent confusion, and prevent unnecessary evidentiary disputes. Patent Owner had been placed on notice that violations may lead to sanctions. Ex. 1037, 3. Accordingly, sanctions may be appropriate on this additional, independent basis, for conduct causing unnecessary delay and costs borne by Petitioner and PTAB on account of repeated violations of the rules and procedures. 37 C.F.R. § 42.12(a)(7) (sanctions appropriate when a party’s conduct causes unnecessary delay or an unnecessary increase in the cost of the proceeding).

C. Order to Show Cause

Appropriate sanctions include expunging or precluding a party from filing a paper, excluding evidence, and compensatory expenses. 37 C.F.R. § 42.12(b). In fashioning a sanction for violating the rules, the selected sanction should bear a reasonable relationship to the severity of the violation. *See, e.g., Apple, Inc. v. Voip-Pal.com, Inc.*, IPR2016-01198, Paper 70 at 9 (PTAB Dec. 21, 2018) (order granting-in-part motion for

sanctions). Further, a sanction should be selected to ensure compliance with the Board's rules, deter others from such conduct and, if appropriate, render whole the aggrieved party. *See id.*; 37 C.F.R. § 42.11(d)(4).

We have already struck the offending evidence, removing the unfair advantage Patent Owner sought by modifying its Response after it was initially filed. However, we do not believe that merely striking the evidence will serve to ensure further compliance with the Board's rules or deter future violations. As explained above, Patent Owner's counsel has repeatedly demonstrated an inability or unwillingness to comply with our rules, orders, and procedures, which have prejudiced Petitioner and placed strain on Board resources. An occasional failure to follow a formatting rule can be excused. However, when an attorney repeatedly fails to follow a number of different rules, despite reminders, the behavior becomes inexcusable. *See Euro-Pro*, IPR2014-00351, Paper 35 at 3.

In view of the above, we offer Patent Owner an opportunity to explain why further sanctions should not be imposed. We are considering imposing sanctions that may include one or more of the following: precluding or otherwise limiting Patent Owner's lead counsel, Mr. Cunningham, from further participation in these proceedings, and awarding attorney's fees to Petitioner incurred in response to the conduct described above. *See* 37 C.F.R. § 42.12. Patent Owner should address these possibilities when responding to this Order. Patent Owner's response to this Order is not to exceed ten pages and is due January 17, 2024. Petitioner may file a reply not to exceed five pages, due January 24, 2024, and limited only to disputing factual assertions made by Patent Owner in its response. Evidence may be

filed in support of both papers. Petitioner may indicate that it does not intend to file a reply by emailing the Board at Trials@uspto.gov.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's Motions to Strike in IPR2023-00473 and IPR2023-00474 are *granted*;

FURTHER ORDERED that (1) paragraphs 108–120 of Exhibit 2034 in IPR2023-00473, (2) paragraphs 52–107 of Exhibit 2034 in IPR2023-00474, and any citations to these paragraphs are stricken from the record;

FURTHER ORDERED that Exhibits 2050, 2053, and 2054, are precluded from being filed and any citations to these paragraphs are stricken from the record;

FURTHER ORDERED that Patent Owner is ordered to show cause why the conduct described in this Order does not warrant the specific sanctions identified herein;

FURTHER ORDERED that Patent Owner's response to our show cause order is to be filed on or before January 17, 2024 in a paper not to exceed ten pages; and

FURTHER ORDERED that Petitioner may file a reply to Patent Owner's response to our show cause order on or before January 24, 2024, in a paper not to exceed ten pages, but only to dispute factual assertions made in Patent Owner's response to our show cause order.

IPR2023-00473 and IPR2023-00474
Patent 11,007,583

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