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Date: July 7, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEX RECREATION CORP.,

Petitioner,

v.

BESTWAY INFLATABLES AND MATERIAL CORP.,
Patent Owner.

IPR2023-00486, IPR2023-00487, IPR2023-00488, IPR2023-00489[1]
Patent 10,687,633

Before BARRY L. GROSSMAN and KIMBERLY McGRAW, *Administrative Patent Judges*.

McGRAW, *Administrative Patent Judge*.

ORDER
Granting In Part Petitioner's Request to File Reply
37 C.F.R. § 42.108(c)

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[1] This order applies to each of the above-listed cases. Although we issue one order to be docketed in each case, the parties are not authorized to use this caption for any subsequent papers

A conference call was held on July 6, 2023 between counsel for the parties and Judges McGraw and Grossman. Counsel for Petitioner requested the conference to seek authorization to file a reply in each proceeding to each of Patent Owner's Preliminary Responses. *See* Ex. 3001 (Petitioner's email request). Specifically, Petitioner seeks authorization to file a 5-page reply brief in each proceeding to address three issues. *See id*. Patent Owner opposes Petitioner's request. *See id.*

As explained below, we determine that Petitioner has demonstrated good cause for a reply on one issue but not on the other two. *See* 37 C.F.R. § 42.108(c). We address each issue in turn.

First, Petitioner requests leave to file replies "to alert the Board to one or more relevant PTAB decisions addressing the issues in dispute that have published since the filing of the Petitions." Ex. 3001. During the call, Petitioner confirmed that it sought to identify two PTAB decisions to the Board and that it could identify and set forth the reasons for these supplemental citations in 350 words or less. This request is granted. Petitioner is authorized to file a reply brief, in each proceeding, limited to 350 words to identify and set forth the reasons for the supplemental citations. Patent Owner is authorized to file a sur-reply, also limited to 350 words.

Second, Petitioner seeks leave to file replies "to correct Patent Owner's mischaracterizations of the decisions cited in its POPRs." *Id*. The request is denied. The Board can assess Patent Owner's characterization of cited decisions, and no additional briefing on this issue is necessary.

Third, Petitioner requests leave to file replies because "despite having another opportunity to do so, Patent Owner still fails to commit to limiting the claims it might assert against Petitioner—indeed, in its POPRs, Patent Owner notes

that the five claims asserted in the related district court case are merely those that are 'initially asserted.'" *Id.* This request is denied. Petitioner does not identify any pertinent factual circumstances that have changed since the filing of the Petitions or otherwise explain why it could not have addressed this issue in its Petitions. Nor does Petitioner provide any other reason showing good cause for filing a reply on this issue.

ORDER

Accordingly, it is:

ORDERED that, in each proceeding, Petitioner's request for authorization to file a reply to alert the Board to two supplemental citations that published after the filing of the Petition is *granted*;

FURTHER ORDERED that, in each proceeding, Petitioner's reply is limited to 350 words and to identifying and setting forth reason for the supplemental citations and that each reply shall be filed no later than July 14, 2023;

FURTHER ORDERED that, in each proceeding, Patent Owner is authorized to file a sur-reply, limited to 350 words, no later than 7 days from the filing of Petitioner's reply; and

FURTHER ORDERED that Petitioner's request for authorization to file replies to Patent Owner's Preliminary Responses on any other issue is *denied*.

FOR PETITIONER:

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