

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOM ENTERPRISES, LLC,
Petitioner,

v.

ELAINE AND REINHOLD W. VIETH,
Patent Owner.

IPR2023-00726
Patent 9,066,958 B2

Before JOHN G. NEW, SHERIDAN K. SNEDDEN, and
CYNTHIA M. HARDMAN, *Administrative Patent Judges*.

HARDMAN, *Administrative Patent Judge*.

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

By email dated August 3, 2023, Petitioner requested leave to file a reply to Patent Owner's Preliminary Response, together with supplemental declarations responsive to the discussion in the Preliminary Response regarding the sufficiency of several declarations filed with the Petition. *See* Ex. 3001. Patent Owner opposed Petitioner's request. *See id.* On August 4, 2023, the panel conducted a conference call with counsel for the parties (Mr. Conrad for Petitioner and Mr. Ungerman for Patent Owner). No court reporter was present.

During the call, Petitioner explained that it sought to file a reply addressing Patent Owner's arguments that the Petition failed to demonstrate a prima facie case regarding the prior art status of certain prior art references, and that Petitioner filed an allegedly "manipulated" translation. Petitioner also requested authorization to file five additional declarations and an additional translation. Patent Owner opposed Petitioner's requests, arguing that Petitioner essentially seeks a "re-do" of the Petition and that the Board can adequately evaluate the parties' arguments based on the existing record.

Upon consideration of the parties' respective arguments during the call, the Board determined that additional briefing would be helpful to the Board's consideration of the issues, and granted Petitioner's request for additional briefing, subject to the deadlines and limitations outlined in the Order below. 37 C.F.R. § 42.5(a). The Board denied Petitioner's request to submit supplemental evidence, given the volume of the evidence sought to be filed in view of the impending institution deadline.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner may file a reply to Patent's Owner's Preliminary Response, limited to addressing Patent Owner's discussion of the sufficiency of the declarations filed at Exhibits 1005, 1007, and 1009, where the reply shall be no more than 5 pages and filed no later than August 11, 2023;

FURTHER ORDERED that Patent Owner may file a sur-reply to Petitioner's reply, limited to addressing the issues raised in Petitioner's reply, where the sur-reply shall be no more than 5 pages and filed no later than August 25, 2023;

FURTHER ORDERED that neither party is authorized to file any additional evidence with its brief; and

FURTHER ORDERED that no other briefing is authorized at this time.

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