

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
Sua Sponte Expunging Exhibits 2016 and 2017
37 C.F.R. § 42.5

By order dated October 30, 2023, the Board authorized the parties to file a number of motions. *See* Paper 23. Of relevance here, the Board authorized Patent Owner to file a motion to compel production of certain documents relating to sales data, market share information, and alleged copying. *See id.* at 6–7. Our Order expressly stated that “neither party is authorized to file any additional evidence or exhibits in support of their briefs.” *Id.* at 7.

Despite this clear guidance, on November 9, 2023, Patent Owner filed its motion (Paper 28), together with two unauthorized exhibits (Exhibits 2016, 2017). Patent Owner also attached two “appendices” to its motion (Appendices 2 and 3), which present comparisons of various product labels. *See* Paper 28, 9–16. These product labels constitute additional evidence, in violation of our Order. *See* Paper 23, 7.

Because the Board did not authorize the filing of additional evidence or exhibits, we *sua sponte* expunge Exhibits 2016 and 2017 from the record. We maintain Patent Owner’s Motion (Paper 28) on the record, but deem stricken from the brief Appendices 2 and 3, as well as any citations within Patent Owner’s brief to these Appendices and to Exhibits 2016 and 2017.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Exhibits 2016 and 2017 are expunged.

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For PETITIONER:

David B. Conrad
Lance E. Wyatt
Sarika Patel
FISH & RICHARDSON P.C.
conrad@fr.com
wyatt@fr.com

For PATENT OWNER:

Mark E. Ungerman
UNGERMAN IP PLLC
mungerman@ungermanip.com

Peter J. Davis
WHITEFORD, TAYLOR & PRESTON LLP
pdavis@wtplaw.com

Alan M. Anderson
ALAN ANDERSON LAW FIRM LLC
aanderson@anderson-lawfirm.com