

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DURATION MEDIA LLC,
Petitioner,

v.

RICH MEDIA CLUB LLC,
Patent Owner.

IPR2023-00953
Patent 11,443,329 B2

Before KARL D. EASTHOM, MICHAEL J. FITZPATRICK, and
JASON M. REPKO, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

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

A conference call in the above proceeding was held yesterday, January 3, 2023, between respective counsel for the parties and the presiding panel.

During the call, counsel for Petitioner stated that the Patent Owner Response's reliance on Exhibits 2046–2049, which are claim charts, violates our rule against incorporation of arguments by reference.¹ *See* 37 C.F.R. § 42.6(a)(3) (“Arguments must not be incorporated by reference from one document into another document.”). Counsel for Petitioner further stated that Petitioner seeks an opportunity to raise the issue and potentially have it resolved prior to filing its reply brief, which is currently due March 12, 2024. Specifically, Petitioner sought authorization for a motion to strike, citing the Board's Consolidated Trial Practice Guide, 80–81 (Nov. 21, 2019) (“TPG”)²; *3M Co. v. Evergreen Adhesives, Inc.*, 860 F. App'x 724, 727–728 (Fed. Cir. 2021); *General Access Solutions, Ltd. v. Sprint Spectrum L.P.*, 811 F. App'x 654, 658 (Fed. Cir. 2020); and *Apple Inc., v. Parus Holdings, Inc.*, No. IPR2020-00656 (Sept. 9, 2021) (Paper 37, 31).

Counsel for Patent Owner disputes the characterization that the Patent Owner Response's reliance on Exhibits 2046–2049 violates the rule against incorporation of arguments by reference.

We authorized briefing during the call, as set forth below.

¹ During the call, the Board and parties also discussed issues related to motions to seal and confidential information that are unrelated to the instant issue. To the extent resolution of those issues necessitates an order, such order will be entered separately.

² The TPG is available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

ORDER

In consideration of the foregoing, it is

ORDERED that Petitioner may file a motion to strike; the motion shall not exceed three pages and shall be filed no later than January 10, 2024;

FURTHER ORDERED that Patent Owner may file an opposition; the opposition likewise shall not exceed three pages and shall be filed no later than January 17, 2024; and

FURTHER ORDERED that a reply brief is not authorized.

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