

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

Petitioner emailed the Board stating that it “moves to strike the [1] improper new evidence and [2] related arguments in Patent Owner’s Sur-Reply.” Ex. 3003. Motions may not be filed by email and, excluding specific exceptions which are not applicable here, may not be filed at will; authorization is generally required. *See* 37 C.F.R. 42.20(b).

We will treat Petitioner’s email as a request to file a motion to strike, and we grant the request. The motion shall, in addition to establishing that Petitioner is entitled to the requested relief per 37 C.F.R. § 42.20(c), explain whether waiting until the close of trial to rule on the motion would cause prejudice.

As for the first form of relief, the parties should note that “[a] sur-reply . . . may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.” 37 C.F.R. 42.23(b).

As for the second form of relief, the parties should note that “striking the entirety or a portion of a party’s brief is an exceptional remedy that the Board expects will be granted rarely.” Board’s Consolidated Trial Practice Guide, 80 (Nov. 21, 2019) (“TPG”).¹ “In most cases, the Board is capable of identifying new issues or belatedly presented evidence when weighing the evidence at the close of trial, and disregarding any new issues or belatedly presented evidence that exceeds the proper scope of reply or sur-reply.” *Id.*

¹ 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 two pages and shall be filed no later than May 6, 2024;

FURTHER ORDERED that Patent Owner may file an opposition; the opposition likewise shall not exceed two pages and shall be filed no later than May 13, 2024; and

FURTHER ORDERED that a reply brief is not authorized.

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PETITIONER:

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