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To: [Garr, David](#); [Trials](#)
Cc: [P52PTABDocket@orrick.com](#); [RFMPTABDocket@orrick.com](#); [XW0PTABDocket@orrick.com](#); [SDC-BOE-IPR](#);
[Weidenfeller, Scott](#)
Subject: RE: IPR2023-00987, -00988, and -01075
Date: Wednesday, July 31, 2024 3:37:22 PM

Counsel,

From the Board –

If Dr. Pattison’s recent trial testimony before the ITC was presented to Dr. Pattison for questioning purposes during the cross-examination of Dr. Pattison as a reply declarant in these proceedings, and if Patent Owner’s sur-reply refers to Dr. Pattison’s answers at cross-examination pertaining to his trial testimony before the ITC, then Patent Owner is authorized to submit the transcript of Dr. Pattison’s recent trial testimony before the ITC as an exhibit to support Patent Owner’s sur-reply in these proceeding.

Regards,

Esther Goldschlager
Supervisory Paralegal Specialist
Patent Trial & Appeal Board
U.S. Patent & Trademark Office

From: Garr, David <dgarr@cov.com>
Sent: Wednesday, July 31, 2024 2:27 PM
To: Trials <Trials@USPTO.GOV>
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Subject: IPR2023-00987, -00988, and -01075

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Dear Honorable Board,

We write on behalf of Patent Owner in IPR2023-00987, -00988, and -01075, to request guidance in connection with our surreply briefs that are due on Monday, August 5.

In parallel litigation at the International Trade Commission, Petitioner’s expert Dr. Pattison recently offered trial testimony about some of the same prior art references at issue in these proceedings, in which he contradicted his and Petitioner’s arguments and explicitly repudiated a theory he and Petitioner advance before the Board. We intend to submit the public transcript of his ITC testimony as an exhibit with our surreply briefs, which we believe to be appropriate because it represents the cross-examination of Petitioner’s reply witness on issues Petitioner presents in these proceedings.

We believe this is information that should be available to the Board in evaluating the issues. However, when we questioned Dr. Pattison about the transcript at his deposition yesterday, counsel for Petitioner advised us that Petitioner objects to our filing of the public ITC transcript without permission from the Board.

Therefore we are writing to seek the Board's guidance on whether it would like us to submit written briefing on this issue along with our surreply briefs – i.e., a motion for leave to submit the ITC transcript as an exhibit in these proceedings. Patent Owner can be available for call at the Board's convenience. Petitioner has not yet provided its availability for a call.

Respectfully submitted,
David Garr
Counsel for Patent Owner

David A. Garr
Pronouns: He/Him/His

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