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To: [Lukas, Aaron](#); [Trials](#)
Cc: [James Murphy](#); [Ryan Murphy](#); jballs@polsinelli.com; [Coblentz, W. Blake](#); [Boezi, Mark](#)
Subject: RE: IPR2023-01035 - Request for Authorization
Date: Wednesday, August 28, 2024 3:27:24 PM

Counsel:

From the Board –

As an initial matter, we note that the Board is capable of identifying and disregarding any new issues that exceed the proper scope of reply. As such, the Board will rarely grant motions to strike portions of a party's brief on that basis. Moreover, our guidelines state "authorization to file a motion to strike should be requested within one week of the allegedly improper submission." Consolidated Trial Practice Guide 80-81. Patent Owner's Reply was filed almost two weeks ago. Under the compressed Revised Scheduling Order, there is not sufficient time to formally brief this issue before Petitioner's Sur-reply is due next week on September 5.

That said, in lieu of formal briefing, Petitioner is authorized to file a one-page paper identifying by page and line number the objected-to portions of the Reply and Expert Declaration. Each identified portion may also include a one or two sentence explanation of Petitioner's objection (e.g., new argument; improper incorporation by reference, etc.). Petitioner shall file the paper by no later than Friday, August 30. Patent Owner is also authorized to file a one-page paper responding to each of Petitioner's objections in one or two sentences by, for example, identifying by page and line number where the allegedly new arguments were made previously. Patent Owner shall file its response by no later than Wednesday, September 4.

The parties may also discuss the objections during oral argument, if they so choose.

No conference call is necessary at this time.

Regards,

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

From: Lukas, Aaron <ALukas@cozen.com>
Sent: Tuesday, August 27, 2024 7:35 PM
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Subject: RE: IPR2023-01035 - Request for Authorization

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Trials,

Patent Owner opposes Petitioners' request. First, given the proximity of Petitioners' request to other

upcoming due dates, any briefing on these issues would necessarily be on a compressed schedule. In recognition of this, the PTAB rules expressly reserve the possibility of “filing a motion to exclude reply or sur-reply evidence after the oral hearing or may make an oral motion to exclude and argue such a motion at the oral hearing.” Further, given that upcoming Due Date 7 falls before the docketed date for a pre-hearing conference, Patent Owner believes that a more efficient use of the Parties’ and this Tribunal’s resources would be to permit briefing to close, and to address all outstanding issues at a pre-hearing conference. Indeed, having not yet received Petitioners’ sur-reply brief, Patent Owner may very well have similar issues to raise. To this end, Patent Owner intends to file a request for a pre-hearing conference at Due Date 6 (August 28), at which time this, and any other outstanding issues, can be discussed and guidance for the efficient resolution of any disputes can be provided by this Tribunal. For these reasons, Patent Owner respectfully requests that Petitioners’ request for immediate briefing on Petitioners’ immediate issues be denied in favor of a more efficient resolution of this, and any other outstanding disputes.

Respectfully,
Aaron Lukas

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From: Ryan Murphy <RMurphy@Polsinelli.com>
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****EXTERNAL SENDER****

Trials,

Petitioner requests authorization to file a motion to strike portions of Patent Owner’s Reply (Paper 25), and the Expert Declaration (Ex. 2010) cited in those portions. Petitioner believes portions of the Reply and corresponding Expert Declaration include improper new arguments and portions of the Reply improperly incorporate arguments from the Expert Declaration by reference. Accordingly, those sections would be addressed in a potential motion.

Patent Owner opposes this request.

Petitioner does not believe a conference call is needed for this request, but is generally available the remainder of this week for a call if the Board deems it necessary.

Respectfully,

Ryan Murphy

Ryan Murphy

Shareholder

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