

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BRYCER, LLC and BRYCER MANAGEMENT, INC.,
Petitioner,

v.

TEGRIS, INC.,
Patent Owner.

IPR2023-01196

**PETITIONERS' OBJECTIONS TO PATENT OWNER'S UNTIMELY
EVIDENCE FIRST SUBMITTED WITH PATENT OWNER'S SUR-REPLY
PURSUANT TO 37 C.F.R. § 42.64(b)(1) AND 37 C.F.R. § 42.23(b)**

Pursuant to 37 C.F.R. § 42.64(b)(1), 37 C.F.R. § 42.23(b), and the Federal Rules of Evidence, Petitioners submit the following objections to the untimely and improper sur-reply evidence served by Patent Owner with Patent Owner’s Sur-Reply on September 12, 2024. These objections are timely filed pursuant to 37 C.F.R. § 42.64(b)(1) within five business days of service of the evidence. The Federal Rules of Evidence (F.R.E.) apply to these proceedings according to 37 C.F.R. § 42.62(a), and these rules form the basis of the objections contained herein.

I. Documentary Exhibits

Petitioners object to the following exhibits (and the portions of any papers or declarations discussing or relying upon these exhibits) for the following reasons.

<u>Exhibits</u>	<u>Objections</u>
2044, 2045, 2046	<u>Timeliness/Improper Sur-Reply Evidence</u> . 37 C.F.R. § 42.23(b). Each of the exhibits first submitted with Patent Owner’s Sur-Reply is improper and untimely because 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); <i>Satco Products, Inc. v. Seoul Semiconductor Co., Ltd.</i> , IPR2020-00836, Paper 45 at 75-76 (PTAB Oct. 22, 2021); Patent Trial and Appeal Board Consolidated Trial Practice Guide November 2019 at 73-74. Petitioners did not provide a reply witness and thus no cross-examination was conducted. Patent Owner did not seek authorization from the Board to submit these exhibits with Patent Owner’s Sur-Reply. Instead, these exhibits purport to be September 10, 2024 print-outs from websites, which on their face demonstrates that the exhibits are improper and untimely and should therefore be excluded.

<u>Exhibits</u>	<u>Objections</u>
	<u>Authentication.</u> F.R.E. 901(a). Patent Owner has not produced evidence sufficient to support a finding that these exhibits are what Patent Owner claims them to be. <u>Relevance.</u> F.R.E. 401-403. These exhibits are not relevant to any issue in this IPR proceeding, and any probative value of the exhibits is substantially outweighed by unfair prejudice, confusing the issues, including because the authenticity and dates of the exhibits have not been established. Additionally, it has not been established that these exhibits dated “September 10, 2024” have any relevance to the issues in this proceeding, including to the interpretation of any claim terms as of the time of the invention of the challenged claims.

Respectfully submitted,

REICHMAN, JORGENSEN, LEHMAN &
FELDBERG LLP

Dated: September 18, 2024

/Patrick Colsher/
Patrick Colsher (Reg. No. 74,955)
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served via email on
September 18, 2024, upon the following counsel of record for Patent Owner:

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