

Filed on behalf of:
Precision Planting, LLC

Filed: November 26, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRECISION PLANTING, LLC,
Petitioner,

v.

MASCHIO GASPARDO S.p.A.,
Patent Owner.

Case IPR2024-00008
U.S. Patent No. 8,770,121

Before BENJAMIN D.M. WOOD, LYNNE H. BROWNE,
and RICHARD H. MARSCHALL, *Administrative Patent Judges*.

PETITIONER'S MOTION TO EXCLUDE EXHIBITS 2020-2023

Pursuant to the Board's authorization, Petitioner moves to exclude Exhibits 2020–2023, which were filed with Patent Owner's Sur-Reply. Patent Owner's submission of Exhibits 2020–2023 violated 37 C.F.R. § 42.23(b) and the Board's Consolidated Trial Practice Guide because these exhibits are not deposition transcripts, the only permissible form of evidence to be filed with a sur-reply.

I. Background

On November 21, 2024, Patent Owner filed its Sur-Reply. (Paper 24). With its sur-reply, Patent Owner filed Exhibits 2020–2023. Petitioner timely objected to Patent Owner's Exhibits 2020–2023 on November 22. (Paper 25). On November 22, Petitioner requested Patent Owner withdraw Exhibits 2020–2023. Since oral argument is presently scheduled for this matter on December 12, 2024, Petitioner immediately sought the Board's authorization on November 22 to file this motion to exclude Exhibits 2020–2023. On November 25, the Board authorized this motion.

II. The Board should exclude Exhibits 2020–2023 because they are not permitted by Rule or the Board's Trial Practice Guide.

Patent Owner's Exhibits 2020–2023 were submitted with Patent Owner's Sur-Reply. The listing of the new exhibits is shown in the following table:

2020	District Court Docket Report, Docket Entry 122
2021	Sur-Reply Declaration of Harry Dankowicz, Ph.D.
2022	Joint Claim-Construction Brief Regarding U.S. Patent No. RE47,447
2023	<i>Hopkins Mfg. Corp. v. Cequent Performance Prods., Inc.</i> , IPR2015-00613 at 11-12 (Paper 9, August 7, 2015)

None of Exhibits 2020–2023 are deposition transcripts of cross-examination of any reply witness. “A sur-reply may only respond to arguments raised in the corresponding reply and 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) (emphasis added); *see also* Patent Trial and Appeal Board Consolidated Trial Practice Guide November 2019 at 73 (“[t]he sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.”)

None of Exhibits 2020–2023 are deposition transcripts of the cross-examination of any reply witness. Rather, they constitute a docket report, a sur-reply declaration of Patent Owner’s expert, claim-construction briefing, and briefing from an unrelated PTAB proceeding. The Board should exclude these exhibits because Patent Owner was not permitted to file evidence of this nature with its Sur-Reply. *Satco Prods., Inc. v. Seoul Semiconductor Co., Ltd.*, IPR2020-00836, Paper 45 at 75–77 (PTAB Oct. 22, 2021).

Dated: November 26, 2024

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Certificate of Service

Pursuant to 37 C.F.R. § 42.6(e), I certify that on November 26, 2024, a true and correct copy of **Petitioner's Motion to Exclude Exhibits 2020–2023** was served by electronic mail on Patent Owner's lead and backup counsel at the following email addresses:

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