

From: [Trials](#)
To: [Jim Glass](#); [Trials](#)
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Subject: RE: IPR Nos. IPR2024-00133, -00171, -00200, -00209
Date: Monday, March 18, 2024 1:30:42 PM

Counsel,

From the Board –

Petitioner is authorized to file a preliminary reply brief addressing 1) Patent Owner's arguments under 35 U.S.C. 325(d); and 2) Patent Owner's arguments that Petitioner has taken inconsistent claim construction positions. Petitioner's reply brief is limited to 5 pages and is due one week from the date of this email. Patent Owner is authorized to file a preliminary sur-reply brief responding to the arguments in Petitioner's preliminary reply brief. Patent Owner's sur-reply is limited to five pages and is due one week after Petitioner has filed its reply brief.

Regards,

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

From: Jim Glass <jimglass@quinnemanuel.com>
Sent: Monday, March 18, 2024 12:09 PM
To: Trials <Trials@USPTO.GOV>
Cc: FPG1367020@kilpatricktownsend.com; Morlock, Michael <MMorlock@ktslaw.com>; Lee, Josh <JLee@ktslaw.com>; arinehart@kilpatricktownsend.com; kkoballa@kilpatricktownsend.com; Playrix-IPRs <playrix-iprs@quinnemanuel.com>
Subject: IPR Nos. IPR2024-00133, -00171, -00200, -00209

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Your Honors,

I am lead counsel for Petitioner in the above-captioned proceedings. I write on behalf of Petitioner to seek leave to submit a short (no more than 5 pages) Reply, to be due within a week of a decision granting leave. The Reply will address Patent Owner's arguments regarding discretionary denial under §325 and alleged inconsistent claim construction positions that were made in the preliminary responses in all four proceedings. The Replies will address similar arguments that were addressed in the Reply in IPR2024-00132, which was authorized over objections similar to the ones Patent Owner raises below. Petitioner reached out to Patent Owner on March 8, and Patent Owner opposes this request. Patent Owner conditionally requests a sur-reply of equal length. Petitioner does not

oppose that request so long as the sur-reply is given the same timing as the Reply.

Petitioner is mindful of both the Board's prohibition against argumentative emails to *Trials* and of 37 CFR § 42.108(c), which requires a request for a Reply to "make a showing of good cause." Good cause exists here because PO's arguments were not foreseeable. Petitioner addressed discretionary denial under §325 in the Petitions, but the specific arguments Patent Owner made were not foreseeable because they mischaracterize the file history and Petitioner's position. Moreover, Patent Owner's arguments regarding alleged inconsistencies in Petitioner's claim construction positions were also not foreseeable as they are misleading and inaccurate. Good cause thus exists to address these issues.

To the extent the Board wishes to hold a hearing on this request, the parties will revert with their availability.

Patent Owner requested that Petitioner include the following statement in this email. Petitioner objects to this statement as contrary to the Board's rules on argumentative responses, and further objects to the comment about timing as misleading, since Petitioner reached out to Patent Owner with its request on March 8, four days before Patent Owner's surreply was due. However, Petitioner provides Patent Owner's position to avoid needless cross-emails to *Trials*:

"Petitioner reached out to Patent Owner for its position on whether it would oppose a reply that "will address Patent Owner's arguments regarding [1] discretionary denial under §325, and [2] alleged inconsistent claim construction positions." There is no good cause for a reply in any proceeding. With respect to §325, each of the Petitions already included a section directed to this issue, and a reply cannot be used to supplement the cursory and incorrect analysis of §325 in the Petitions. With respect to inconsistent claim construction positions, the Defendant in the related litigation is the same as the Petitioner and thus was fully aware of the constructions raised in its Petitions when it submitted different constructions to the District Court. Patent Owner further objects to the timing of this request because Petitioner did not seek a reply until after it would have reviewed Patent Owner's arguments in the sur-reply filed in IPR2024-00132, and Patent Owner has acknowledged in correspondence that the replies will be substantially the same as the reply filed in that proceeding, but "take into account the minor differences in the arguments raised in each" proceeding. Given that there are only "minor differences" there is no need for a reply beyond that filed in IPR2024-00132. However, to the extent the Board authorizes a reply, Patent Owner requests a sur-reply of equal length."

Respectfully,

James Glass