

Petitioner's Reply to Patent Owner's Opposition to Motion to Exclude Evidence
IPR2024-00287 (U.S. Patent No. 11,611,520)

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DROPBOX, INC.
Petitioner

v.

MOTION OFFENSE, LLC
Patent Owner

IPR2024-00287
U.S. Patent No. 11,611,520

**PETITIONER'S REPLY TO PATENT OWNER'S OPPOSITION TO
MOTION TO EXCLUDE EVIDENCE**

TABLE OF CONTENTS

I.	ARGUMENT.....	1
A.	Petitioner’s Motion To Exclude Is Procedurally Proper.....	1
B.	PO’s Arguments Regarding 37 C.F.R. § 42.51 Fail	1
II.	CONCLUSION.....	4

PO's opposition to Petitioner's motion to exclude fails to identify any persuasive reason the Board should allow PO to use its Sur-Reply circumvent the Board's prior rulings. For all the reasons set forth in its motion and here, Petitioner respectfully requests that the Board exclude the portions of PO's Sur-Reply highlighted in EX1137.

I. ARGUMENT

A. Petitioner's Motion To Exclude Is Procedurally Proper

PO's primary argument is a procedural argument that Petitioner should have filed a motion to strike rather than a motion to exclude. Paper 41 ("Opp."), 1-4. But that argument rings hollow in light of the history of this proceeding and the Board's own order on these issues. On March 25, 2025, Petitioner indicated that it intended to file a motion to strike this material from the sur-replies. EX1138; EX1139. During the March 28, 2025 conference call, the Board asked Petitioner if a "motion to exclude...would provide a sufficient mechanism for addressing" the issues. Petitioner agreed to that vehicle. *Id.*, 21:22-22:07. The Board's subsequent order confirmed that the motion to exclude would address "improper evidence and arguments." Order at 4 n.3. Thus, PO's procedural argument fails; Petitioner's motion seeks exactly the relief that the Board indicated it could.

B. PO's Arguments Regarding 37 C.F.R. § 42.51 Fail

None of PO's substantive arguments have merit.

PO first argues that it was “obligat[ed] to present its concern [regarding 37 C.F.R. § 42.51] to the Board and seek relief’ to preserve these issues.” Opp. 1, 2-3, 7. PO cites *AliveCor, Inc. v. Apple Inc.*, 104 F.4th 1006, 1019 (Fed. Cir. 2025), but *AliveCor* does not support PO’s position. *AliveCor* lists ways that a party can preserve an argument for an appeal, including telling the Board it believed the opposing party was violating its discovery obligation. But PO did that *before* its Sur-Reply, and the Board properly rejected the allegation. There was no reason for PO to raise that argument *again* in its Sur-Reply—other than to evade the Board’s prior decision.

PO then argues that its timing in raising its arguments “was within the range that...should normally be acceptable.” Opp. 3 (citing *Ultratec, Inc. v. CaptionCall, LLC*, 872 F.3d 1267, 1272-74 (Fed. Cir. 2017)). As an initial matter, this is an argument that the Board has already rejected twice. And for good reason. Nearly all of the late-identified evidence here was available long before PO filed its POR, and the Board supplied multiple reasons for its decision. *See* EX3001; Order at 4-7. This case therefore stands in sharp contrast to *Ultratec*, where the new evidence could not have been obtained earlier and the Board offered “no reasoned basis” for its decision. 872 F.3d at 1272-73.

PO also argues that Petitioner’s statement that the materials PO now seeks to add were “publicly available” is “misleading and irrelevant” because it is

Petitioner's obligation to adhere to § 42.51(b)(1)(iii) regardless of whether material is publicly available. Opp. 3. But Petitioner's statement that the disputed materials were "publicly available" related to the *timeliness* of PO's allegations and merely quoted the Board's own reasoning as to why it was not credible that PO was unable to obtain evidence earlier—in the Board's words, because PO "admits that most of the evidence was publicly available.". Paper 40 ("Mot.") at 2 (quoting Order at 6-7). It is not misleading to quote the Board, and Petitioner's argument is relevant to why PO's evidence and argument are untimely. Moreover, Petitioner *did* comply with its obligations under § 42.51(b)(1)(iii), and Petitioner has countered each of PO's arguments otherwise. *See generally* Mot.

PO further argues that Petitioner's assertion of "prejudice" rings hollow because (1) PO met the "low threshold for relevancy," and (2) Petitioner "fails to articulate what the prejudice is." Opp. 4. But even relevant evidence may be excluded when "its probative value is substantially outweighed by a danger of," *inter alia*, "unfair prejudice." FRE 403. And Petitioner has articulated its prejudice: the failure to have "a full and fair opportunity to respond to [PO's] late made assertions." *Id.* (quoting Mot. at 3).

The Board has already considered and rejected PO's arguments multiple times. It should do so again here.

II. CONCLUSION

Petitioner requests the Board exclude from this proceeding the statements from PO's Sur-Reply that Petitioner has highlighted in EX1137, and the new evidence therein.

Respectfully submitted,

/Trishan Eram/

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Registration No. 74,075

UPDATED TABLE OF EXHIBITS

Exhibit	Description
1101	U.S. Patent No. 11,611,520
1102	Declaration of Dr. Todd Mowry
1103	U.S. Patent No. 8,825,597 ("Houston")
1104	U.S. Patent No. 9,633,125 ("Garcia")
1105	U.S. Patent Application Publication No. 2010/0005138 ("Manzano")
1106	U.S. Patent Application Publication No. 2007/0011246 ("Wu")
1107	U.S. Patent Application Publication No. 2013/0046833 ("Riepling")
1108	U.S. Patent Application Publication No. 2012/0278404 ("Meisels")
1109	U.S. Patent Application Publication No. 2013/0067303 ("Kantor")
1110	[Reserved]
1111	[Reserved]
1112	[Reserved]
1113	<i>Motion Offense, LLC v. Dropbox, Inc.</i> , WDTX-6:20-cv-00251, Jury Verdict Form, May 19, 2023, Dkt. 382
1114	'520 Patent File History
1115	U.S. Patent No. 6,351,776 ("O'Brien")
1116	U.S. Patent Application Publication No. 2008/0320397 ("Do")

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IPR2024-00287 (U.S. Patent No. 11,611,520)

Exhibit	Description
1117	[Reserved]
1118	<i>Motion Offense, LLC v. Dropbox, Inc.</i> , WDTX-6:23-cv-00303, First Amended Complaint for Patent Infringement, July 26, 2023, Dkt. 22
1119	U.S. Patent Application Publication No. 2004/0267705 (“Lemus”)
1120	U.S. Patent No. 6,304,948 (“Motoyama”)
1121	U.S. Patent No. 7,559,088 (“Cohen”)
1122	U.S. Patent Application Publication No. 2003/0182332 (“McBrearty”)
1123	<i>Motion Offense, LLC v. Dropbox, Inc.</i> , WDTX-6:23-cv-00303, Plaintiff's Disclosure of Preliminary Infringement Contentions, September 20, 2023
1124	Declaration of Gregory H. Lantier
1125	Declaration of Liv L. Herriot
1126	Declaration of Todd C. Zubler
1127	Second Declaration of Dr. Todd Mowry
1128	Deposition Transcript of Michael Smith
1129	<i>Motion Offense, LLC v. Dropbox, Inc.</i> , WDTX-6:20-cv-00251, Judgment, August 29, 2024, Dkt. 439
1130	<i>Motion Offense, LLC v. Dropbox, Inc.</i> , WDTX-6:20-cv-00251, Trial Transcript, September 9, 2023, Dkt. 402
1131	U.S. Patent No. 10,021,052

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IPR2024-00287 (U.S. Patent No. 11,611,520)

Exhibit	Description
1132	Patent Owner's Infringement Contentions
1133	[Reserved]
1134	[Reserved]
1135	[Reserved]
1136	[Reserved]
1137	Highlighted Version of Patent Owner's Sur-Reply
1138	March 27, 2025 Email from Petitioner to the Board
1139	March 25, 2025 Email from Petitioner to Patent Owner (Attachment to EX1138)

CERTIFICATE OF SERVICE

I hereby certify that, on April 18, 2025, I caused a true and correct copy of the foregoing materials:

- Petitioner's Reply to Patent Owner's Opposition to Motion to Exclude Evidence
- Exhibits 1138-1139
- Updated Table of Exhibits

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Respectfully Submitted

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