

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALERTUS TECHNOLOGIES, LLC,
Petitioner,

v.

DESKTOP ALERT, INC.,
Patent Owner.

IPR2024-00363
Patent 9,172,765 B2

Before MICHELLE N. WORMMEESTER, JULIET MITCHELL DIRBA, and
ANDREW L. NALVEN, *Administrative Patent Judges*.

NALVEN, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

A conference call was held between the Board and counsel for the parties on April 29, 2024. The conference was scheduled to discuss Petitioner's request for authorization to file a reply to Patent Owner's Preliminary Response ("POPR") for the purposes of addressing claim construction and § 325(d) arguments raised in the POPR. Ex. 3001. With respect to claim construction, Petitioner indicated on the call that it would address only the claim terms discussed in the POPR. We note that the POPR discusses four claim terms: "alert message," "alert message cache," "alert ID numbers," and "a first triggering step." Paper 5, 10–14.

On the conference call, Patent Owner indicated that it does not oppose Petitioner's request on the condition that Petitioner does not oppose the Board authorizing Patent Owner to file a sur-reply of equal length. Petitioner indicated that it does not oppose authorizing a sur-reply for Patent Owner if the sur-reply is subject to the same restrictions as the reply. *Id.* We grant Petitioner's request because we determine that the Board would benefit from additional briefing on these issues. Furthermore, we authorize Patent Owner to file a sur-reply to Petitioner's reply.

Accordingly, it is

ORDERED that Petitioner is authorized to file a seven-page reply, limited to addressing the claim construction and § 325(d) arguments raised in the POPR, no later than May 6, 2024;

FURTHER ORDERED that Patent Owner is authorized to file a seven-page sur-reply, limited to responding to Petitioner's reply, no later than May 13, 2024; and

FURTHER ORDERED that no additional evidence is permitted to be submitted with either paper.

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