

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VICOR CORPORATION,
Petitioner,

v.

DELTA ELECTRONICS, INC.,
Patent Owner.

IPR2024-00704
Patent 8,711,580 B2

Before THU A. DANG, NATHAN A. ENGELS, and
SHEILA F. McSHANE, *Administrative Patent Judges*.

ENGELS, *Administrative Patent Judge*.

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

BACKGROUND

Petitioner e-mailed the Board to request authorization to file a preliminary reply to the Patent Owner Preliminary Response in the above case, and Patent Owner emailed the Board expressing its oppositions to

Petitioner's requests. Ex. 3001. The Board conducted a conference call with counsel for the parties to discuss Petitioner's request and Patent Owner's opposition. A transcript of the call has been filed. Ex. 1021 ("Tr.").

DISCUSSION

Petitioner requests authorization to file a preliminary reply to Patent Owner's Preliminary Response of up to five pages to address what Petitioner characterizes as (1) "Patent Owner's implicit claim constructions presented in response to the Petition's use of Patent Owner's Apparent Constructions for Ground 1"; (2) discretionary denial; (3) "Patent Owner's assertion that the Petition failed to apply the ordinary meaning of the claim terms, when in fact, Ground 2 is based on the ordinary meaning of the claim terms"; and (4) "Patent Owner's assertion that it provided 'objective evidence of non-obviousness.'" Ex. 3001, 1. According to Petitioner, good cause for additional briefing exists because "Petitioner could not have foreseen Patent Owner's arguments" regarding those issues. Ex. 3001, 2.

Patent Owner opposes Petitioner's request as to (1) and (3) but not at to (2) and (4). Regarding (1), Patent Owner states that Petitioner had an opportunity to brief the plain and ordinary meaning for its Ground 1 and Petitioner should not be given a second chance to do so. Ex. 3001, 1. Regarding (3), Patent Owner states that the Board is able to determine whether Petitioner presented Ground 2 under the plain and ordinary meaning and that a reply is unwarranted. Ex. 3001, 1. During the telephone conference, Patent Owner stated that its arguments are based on a failure in the Petition and that the Board is equipped to determine whether the Petition is defective. Tr., 10:17.

We are mindful of the fact that a preliminary reply is not a vehicle to cure deficiencies in a petition. Under the circumstances of this case, however, upon hearing the parties' arguments for and against additional preliminary briefing, we determine the requested briefing will assist the Board. Accordingly, Petitioner's request for additional briefing is granted.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner may file, on or before August 20, a five-page preliminary reply to the Patent Owner's Preliminary Response, addressing the issues outlined in Petitioner's email request (Ex. 3001, 2);

FURTHER ORDERED that Patent Owner may file a five-page preliminary sur-reply in response to Petitioner's preliminary reply, on or before August 27.

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