

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG DISPLAY CO., LTD.,
Petitioner,

v.

PICTIVA DISPLAYS INTERNATIONAL LTD.,
Patent Owner.

Case No. IPR2024-01095
Patent No. 11,828,425 B2

OPPOSITION TO PETITIONER'S MOTION TO STRIKE

I. It is Inappropriate to Strike Any Portion of the Brief

Striking “a portion of a party’s brief is an exceptional remedy that the Board expects will be granted rarely.” CTPG at 80. Here, the evidence is in response to the new arguments raised in the Reply, and Ex. 1 to EX2032 did not exist at the time of the POR. Nor does Petitioner claim to have suffered any prejudice. Given these facts, the Board should not strike any portion of the brief. *Casper Sleep Inc. v. Werner Media Partners, LLC*, IPR2024-00474, Paper 48 at 7 (PTAB Jan. 13, 2025) (denying Petitioner’s motion to strike portions of Patent Owner’s Sur-reply based on new exhibits).

II. Rule 42.23(b) Should Not Be Used to Aid Gamesmanship by Petitioner

As the Board may recall, Petitioner submitted a “form” declaration by a Ms. Garland to gain institution but failed to offer her for deposition. EX3102. The Reply abandoned the Garland declaration, and attempted to use evidence submitted with POR in IPR2024-01094 to argue that the article was indexed by 12/1/2008. Reply 2. To be clear, in IPR2024-01094, Patent Owner only argued that the indexing occurred in December 2008, not that it occurred on 12/1/2008. EX1045, 34; EX1046, ¶150.

In this IPR, in response to Petitioner’s new Reply argument, Patent Owner presented evidence in the Sur-Reply that a Reply exhibit EX1042, (1) was allegedly “available online” on March 7, 2007, (2) was published in paper form in March 2007 (the first image on Sur-Reply 2), but (3) was shown as indexed on March 1, 2007 by

Web of Science (the second image on Sur-Reply, 2).¹ The evidence supports Pictiva's position that "12/1/2008 date may reflect just the month in which, not the date on which, Ma was published and indexed." Sur-Reply 1-2.

APA requires the Board provide Patent Owner with a full and fair opportunity to respond to Petitioner's arguments. Thus, the rules cannot be implemented in such a way that they would allow a Petitioner to use a declaration to gain institution and then abandon the declaration to rely on new evidence, while precluding Patent Owner from introducing evidence to counter the new evidence and theories. If necessary, the Board should exercise its discretion to waive Rule 42.23(b) to deter gamesmanship and to ensure that it has all relevant facts when drafting its final written decision. 37 C.F.R. § 42.5(b). Additionally, if required, Patent Owner is happy to submit the images as exhibits. *Cf.*, IPR2024-01094 Paper 1 at 16 n.5 (Petitioner referencing web site content without submitting the url as an exhibit).

III. Rule 42.23(b) Does Not Preclude Submission of Deposition Exhibit

The Board has repeatedly permitted "the exhibits used during cross-examination to be submitted" for at least the "purpose of allowing the Board to understand the context of the cross-examination." *Edwards Lifesciences Corp. v.*

¹ Petitioner does not object to the images on authenticity or hearsay ground.

Moreover, the pre-motion email exchanges have nothing to do with these images.

Cardiovalve Ltd., IPR2021-00383, Paper 60 at 87 (PTAB July 18, 2022); *see also Ascend Performance Materials Ops. LLC, v. Samsung SDI Co., Ltd.*, IPR2020-00349, Paper 53 at 12 (PTAB July 15, 2021) (vacated on other grounds) (“[I]f exhibits are introduced during a deposition for the purposes of testing the witness’ testimony, a party should be able to submit those exhibits with the transcript, so the Board has the full context available in order to evaluate the testimony.”). Exhibit 1 used during Dr. Holmes’ deposition is thus properly submitted as part of EX2032.

There is also nothing misleading about describing EX2032 as the “Holmes Deposition Transcript”: Exhibit 1 is part of the transcript. For example, the court reporting service provided “linked” transcript where one can click on “Exhibit 1” etc. to access exhibits used during deposition. *See* <https://app.box.com/s/ag15ykig7k63133x0yhf6nu1mj6b4101> (encrypted linked Holmes transcript). What is misleading is Petitioner’s suggestion that it has served Exhibit 1 on Patent Owner. It never did; Patent Owner has a copy of the transcript only because it is a party in the other proceeding. That Dr. Katona—and according to Petitioner, now Dr. Holmes—acknowledges that Liq may or may not serve as n-dopants in a blend, is inconsistent with Petitioner’s assumption that a POSITA would have known that Liq, when used in Diekmann or Suzuki, would function as an n-dopant. It should have been filed with the Reply under Rule 42.51(b)(1)(iii).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. § 42.6, that on October 5, 2025, a complete copy of the foregoing document, **OPPOSITION TO PETITIONER’S MOTION TO STRIKE** was served by ELECTRONIC MAIL, as agreed to by the parties, upon the following:

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