

From: [Trials](#)
To: [Brett A. Postal](#); [Alex Pechette](#); [Josh Griswold](#); [Joseph A. Hynds](#)
Cc: [Trials](#)
Subject: RE: IPR2024-01426, -01427 - Request to Submit Reply to POPR
Date: Tuesday, January 7, 2025 11:57:20 AM

Counsel,

Petitioner's request to file replies is granted because the briefing would be helpful to the Board. In each proceeding, Petitioner is authorized to file a reply to Patent Owner's Preliminary Response, no more than five-pages, no later than January 17, 2025, and limited to the topics listed in Petitioner's email. In each proceeding, Patent Owner is authorized to file a sur-reply, no more than five-pages, no later than January 29, 2025. No additional evidence may be submitted with the reply and sur-reply.

No conference call will be held at this time. If either party still believes a conference call is necessary, they may renew the request.

Regards,

Franchesca I. Alicea Villanueva
Supervisory Paralegal
Patent Trial & Appeal Board
U.S. Patent & Trademark Office

From: Brett A. Postal <bpostal@rothwellfigg.com>
Sent: Monday, January 6, 2025 7:06 PM
To: Alex Pechette <pechette@fr.com>; Trials <Trials@USPTO.GOV>
Cc: Josh Griswold <griswold@fr.com>; Joseph A. Hynds <jhynds@rothwellfigg.com>
Subject: RE: IPR2024-01426, -01427 - Request to Submit Reply to POPR

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Your Honors,

I write on behalf of Patent Owner, Unverferth Mfg. Co., Inc.

Petitioner's email improperly includes argumentation, and Petitioner failed to provide Patent Owner with a draft of the email or complete explanation for why it believed good cause existed prior to sending the email. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide (November 2019) at 9-10; *see also* IPR2021-01468, Paper 10 at 3 (P.T.A.B. Jan. 27, 2022). Counsel for Patent Owner is available for a conference call with the Board to address the allegations in Petitioner's

Ex. 3001
IPR2024-01426
IPR2024-01427

email and Petitioner's request for additional briefing.

Best regards,
Brett



Brett A. Postal

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From: Alex Pechette <pechette@fr.com>

Sent: Monday, January 6, 2025 5:09 PM

To: trials@uspto.gov

Cc: Josh Griswold <griswold@fr.com>; Joseph A. Hynds <jhynds@rothwellfigg.com>; Brett A. Postal <bpostal@rothwellfigg.com>

Subject: IPR2024-01426, -01427 - Request to Submit Reply to POPR

Your Honors,

I write on behalf of Petitioner Par-Kan Company, LLC, regarding IPR2024-01426 and -01427. Petitioner respectfully requests authorization to file a five-page reply to Patent Owner's Preliminary Response ("POPR") in each of the aforementioned IPRs.

Petitioner's replies would address:

1. Patent Owner's arguments regarding its alleged reduction to practice, *see, e.g.*, IPR2024-01426 POPR at 54-73;
2. Patent Owner's arguments urging discretionary denial under 35 U.S.C. § 325(d), *see, e.g., id.* at 45-54; and
3. Patent Owner's arguments regarding claim construction, *see, e.g., id.* at 24-33.

Good cause exists for further briefing on these issues because of factual inconsistencies between the POPRs and Patent Owner's statements during prosecution and litigation. For example:

- Patent Owner claims it built a prototype of the claimed invention and determined that the prototype worked for its intended purpose in early 2006, *id.* at 58, but during prosecution Patent Owner represented that the same prototype was "not operating

properly” in 2006 and had to be “redesigned,” IPR2024-01426 Ex. 2034 ¶ 11.

- Patent Owner claims it introduced the Seed Runner at a trade show in 2006, one year before the filing date of the provisional application to which the challenged patents claim priority, *see, e.g.*, IPR2024-01426 POPR at 57-59, but during prosecution Patent Owner represented that the Seed Runner was “introduced in 2007, after the filing of the [provisional] application,” IPR2024-01426 Ex. 1012 at 131.
- Patent Owner argues that “below” means directly “under,” *see, e.g.*, IPR2024-01426 POPR at 27-30, but in litigation Patent Owner disputed this construction and argued that “below” simply means “lower than.” *See, e.g.*, IPR2024-01426 Ex. 2023 at 27.

Petitioner, in drafting its petitions, could not have anticipated that Patent Owner would take these inconsistent positions. If the Board desires, Petitioner can provide further explanation of good cause.

Petitioner proposes that its reply would be due within 10 business days of the Board’s authorization.

Petitioner conferred with Patent Owner regarding this request on January 3 and January 6, 2025. Patent Owner opposes this request.

Should the Board desire a conference to discuss this request, the parties are available on Tuesday, January 7, at 1:30-3:00pm and 4:00-5:00pm or anytime on Friday, January 10, except 11:30am-12:30pm.

Respectfully,
Alexander Pechette
Counsel for Petitioner Par-Kan Company, LLC

Alexander M Pechette

Principal ■ Fish & Richardson P.C.

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