

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FIRST QUALITY RETAIL SERVICES, LLC,
FIRST QUALITY CONSUMER PRODUCTS, LLC,
FIRST QUALITY PRODUCTS, LLC, and
FIRST QUALITY ENTERPRISES, LLC,
Petitioner,

v.

ESSITY HYGIENE and HEALTH AB,
Patent Owner.

IPR2024-01487
Patent 9,308,138 B2

Before JAMES A. TARTAL, KRISTINA M. KALAN, and
RYAN H. FLAX, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

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

On January 30, 2026, Petitioner filed Objections to Evidence (Paper 33), objecting to Patent Owner's filing of Exhibit 2010 with Patent Owner's Sur-Reply.

On February 5, 2026, Patent Owner contacted the Board (Ex. 3001), requesting to withdraw Exhibit 2010 and to refile its Patent Owner Sur-Reply brief to "remove the single citation and parenthetical referencing the Cambridge dictionary definition of 'typically' in the interest of compromise and in view of Petitioners' objection." Patent Owner also confirmed that Petitioner did not object to this course of action. *Id.*

Our rules prohibit a patent owner from submitting new evidence with its sur-reply other than deposition transcripts of the cross-examination of any reply witness. 37 C.F.R. § 42.23(b) ("A sur-reply may only respond to arguments raised in the corresponding reply and may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness."). Accordingly, we expunge Exhibit 2010.

We do not, at this time, grant Patent Owner's request to re-file its Sur-reply; instead, we disregard and do not consider any evidence or arguments therein exceeding the proper scope of a sur-reply under 37 C.F.R. § 42.23(b) and as explained in our Trial Practice Guide § II.I (December 12, 2025), *available at* <https://www.uspto.gov/patents/ptab/trial-practice-guide>.

ORDER

Accordingly, it is

ORDERED that Exhibit 2010 is expunged.

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FOR PETITIONER:

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