

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EMBODY, INC. AND ZIMMER BIOMET HOLDINGS, INC.,
Petitioners

v.

LIFENET HEALTH,
Patent Owner.

IPR2025-00248 (U.S. Patent No. 10,137,223)
IPR2025-00249 (U.S. Patent No. 11,318,227)

**PATENT OWNER'S RESPONSE
TO PETITIONER'S IDENTIFICATION OF ALLEGED IMPROPER
SUR-REPLY ARGUMENT AND EVIDENCE**

Petitioner argues that each Sur-Reply presents improper arguments and evidence.¹ IPR2025-00248, Paper 35; IPR2025-00249, Paper 34 (collectively, “Pet. Identification”). Petitioner argues that the Sur-Replies “propose[] a new claim construction that requires each major peak to have a height higher than the average height of the peaks in the result *and* also present ‘*statistical significance* apart from *measurement/reporting error*.’” Pet. Identification 1.

Patent Owner responds that it presented the same claim construction in its Responses and in its Sur-replies. Specifically, in both papers, Patent Owner explained that the lexicographic definition of “major peaks” applies. *E.g.*, IPR2025-00248, Resp. 6-9; IPR2025-00248 Sur-reply 1-12.

In its Replies, Petitioner relied on Dr. Simpson’s testimony to argue that this definition conflicts with the Specification’s own Figure 8B such that, “under Patent-Owner’s lexicographer argument, the FFT plot for [the random sample depicted in] Figure 8B would fall within claim 1 because two of its four peaks exceed the calculated average.” *E.g.*, IPR2025-00248, Reply 8-9 (citing Ex.2019 ¶¶18-19). Petitioner argued that, by contrast, Figure 8B’s “random control sample would *not* fall within the scope of the claims” under “Ayres2008’s visual test,” which “explains that four peaks of ‘nearly uniform height’ indicate random fibers.” *Id.*

¹ Petitioner does not identify any allegedly improper evidence.

In its Sur-replies, Patent Owner responded by arguing that “Figure 8B depicts a ‘control’ sample of random fibers, where no peaks exceed the average height (within conventional bounds of experimental error).” Sur-reply 4 (citing Ex.1010, 609). Patent Owner also explained that Dr. Simpson did not argue that the alleged differences in peak height in Figure 8B “present[] any statistical significance apart from measurement/reporting error.” *Id.* (citing Ex.2019 ¶9).

These arguments respond to Dr. Simpson’s testimony cited in the Reply. Trial Practice Guide § II.I. For example, they respond by explaining that Dr. Simpson did not testify that the height differences to which he testified have a mathematical bearing on a calculated average, central to Dr. Simpson’s testimony that Figure 8B is inconsistent with the Specification’s definition. Sur-reply at 4-5 (identifying alleged variation of 820/1790 out of ~95,000). The Sur-replies also respond that Dr. Simpson’s testimony about Figure 8B conflicts with his earlier testimony that FFT peaks “repeat” every 180°. *Id.* at 5 n.2.

Dated: April 20, 2026

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Certification of Service

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on April 20, 2026, a copy of the foregoing document and attached exhibits were served by electronic mail upon the following counsel of record for Petitioner:

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