

From: [Walters, Chad](#)
To: [Trials](#)
Cc: swadekar@princetonobel.com; [Matthew Vella](#); [Amanda L"Esperance](#); [Michael Saunders](#); [Rich, Harrison](#); [Barazesh, Ellyar](#); [DL Axon Dedrone IPRs](#); [Rao, Sasha](#); [Puri, Ashe](#)
Subject: IPR2025-00629 Motion to Strike
Date: Monday, April 27, 2026 1:02:52 PM

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Dear Patent Trial and Appeal Board,

Petitioners write to request authorization to file a motion to strike in IPR2025-00629. In connection with its sur-reply filed April 20, 2026 (Paper 36), Patent Owner filed the deposition transcript of Petitioners' expert witness (EX2033) and 4 additional new exhibits, including a new 73-page declaration of Patent Owner's expert. Patent Owner's sur-reply extensively discussed and relied on the new exhibits. Petitioners asked Patent Owner for the justification of the new evidence in light of 37 CFR 42.23(b), and Patent Owner responded by offering to withdraw each of the new exhibits except for EX2033 (deposition transcript of Petitioners' expert) and EX2034. Patent Owner also offered to delete certain portions of its sur-reply that relied on and discussed the new exhibits. Since that time, Petitioners and Patent Owner have exchanged multiple proposals about the improper portions that should be deleted from Patent Owner's sur-reply. The outstanding issues surround Patent Owner's discussion of EX2034 in its sur-reply. Petitioners are not requesting that EX2034 itself be stricken.

Petitioners request authorization to file a motion to strike the portions of Patent Owner's sur-reply that discuss EX2034. While some PTAB decisions have allowed filing with a sur-reply an exhibit used in a deposition of a reply declarant to provide context for the Board and to test the witness's testimony, Patent Owner's discussion of EX2034 in its sur-reply goes well beyond testing the witness. Patent Owner substantively relies on the exhibit to support its arguments against unpatentability based on the construction of "autonomously." *Continental Automotive Systems, Inc. V. Intellectual Ventures II LLC*, IPR2022-00972, Paper No. 49 at 53 (PTAB Dec. 5, 2023) (allowing exhibit when Patent Owner "does not rely on the substance" of the exhibit); *see also Ascend Performance Materials Operations LLC v. Samsung SDI Co. LTD.*, IPR2020-00349, Paper 53 at 12 (PTAB) ("such exhibits should be considered only for that purpose [testing the witness' testimony], not as evidence supporting the party's arguments on the merits."). In addition, Patent Owner could have used EX2034 in the deposition of Petitioners' expert before Patent Owner filed its corrected Patent Owner response (Paper 20) and its

corresponding exhibits to support its claim construction position. But Patent Owner chose not to take that deposition and instead waited to use EX2034 in the deposition of Petitioners' expert ahead of its sur-reply. Patent Owner then used the substance of EX2034 to support its sur-reply arguments when Petitioners did not have the opportunity to respond. Petitioners also note the Consolidated Trial Practice Guide states that a sur-reply that "belatedly presents evidence may not be considered" and that the Board "is not required to attempt to sort proper from improper portions of the reply or sur-reply." (CTPG, p. 74).

Patent Owner's Position:

Subsequent to the filing of Patent Owner's surreply, Petitioner raised an issue with Patent Owner about the propriety of the exhibits submitted with the surreply. Patent Owner readily agreed to withdraw Exhibits 2031, 2032, and 2035 and to submit a corrected surreply removing the discussion of those exhibits.

The inclusion of Exhibits 2033 and 2034 themselves is not in dispute. The parties dispute, however, the discussion of Exhibit 2034 in the surreply.

Ex. 2034, an article by Petitioner's expert, Dr. Singhose, was introduced as an exhibit at Dr. Singhose's deposition on his reply declaration. Patent Owner's surreply discusses that exhibit to test Dr. Singhose's testimony, i.e., to demonstrate that Dr. Singhose's opinions—expressed in his reply declaration and deposition—regarding the construction of the "autonomously navigating" limitation, are inconsistent with Dr. Singhose's own prior use of "autonomous." See *Continental Automotive Systems, Inc. V. Intellectual Ventures II LLC*, IPR2022-00972, Paper No. 49 at 52 (PTAB Dec. 5, 2023) ("Board cases have held that exhibits introduced during [a reply declarant's] deposition may also be submitted with a sur-reply if used for the purpose of testing the witness's testimony") (citing *Edwards Lifesciences Corporation et al., v. Cardiovalve Ltd.*, IPR2021-00383, Paper 60 at 85–88 (PTAB July 18, 2022)). To the extent Patent Owner refers to its own construction in the context of Ex. 2034, Patent Owner will remove that discussion in a corrected surreply.

Contrary to Petitioners' allegation, the introduction of Ex. 2034 is not belated. Patent Owner could not have used that document at an earlier deposition on Dr. Singhose's first declaration because Dr. Singhose did not opine about the disputed construction of "autonomously navigating" in his First Declaration. He did so only in his reply, i.e., Second Declaration.

Accordingly, Patent Owner requests that the Board withdraw Exhibits 2031, 2032, and 2035, and permit Patent Owner to file a corrected surreply removing all of the disputed material other than the references to Ex. 2034 discussed above. Additionally, Patent Owner submits that Petitioner's request to strike portions of the surreply is not an appropriate remedy, and that the Board can simply disregard any arguments relating to Ex. 2034 if it ultimately deems them improper. CTPG 80–81 (“striking the entirety or a portion of a party’s brief is an exceptional remedy that the Board expects will be granted rarely”).

The parties are available for a conference call with the Board to discuss this request at the following times (all EDT):

4/28: 9 am – 1 pm

4/29: 9 am – 3 pm

5/4: 9 am – 5 pm

5/5: 9 am – 1:30 pm

Chad Walters

Lead Counsel for Petitioners

Baker Botts L.L.P.

chad.walters@bakerbotts.com

T +1.214.953.6511

F +1.214.661.4511

M +1.214.557.2423

2001 Ross Avenue, Suite 900

Dallas, TX 75201

USA



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