

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AXON ENTERPRISE, INC., DEDRONE HOLDINGS, INC., and
SKYDIO, INC.
Petitioner,

v.

AIRSPACE SYSTEMS, INC.,
Patent Owner.

IPR2025-00629
Patent 10,514,711 B2

Before MICHAEL R. ZECHER, BARRY L. GROSSMAN, and
SCOTT C. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

ORDER

Denying Authorization to File Motion to Strike
37 C.F.R. §§ 42.20(b), 42.5(a)

I. INTRODUCTION

On April 20, 2026, Patent Owner filed its Sur-reply (Paper 36) together with five supporting exhibits (Exhibits 2031–2035). On April 27, 2026, Petitioner’s counsel contacted the Board by e-mail and requested authorization to file a motion to strike “the portions of Patent Owner’s sur-reply that discuss [Exhibit 2034].” Ex. 3002. Exhibit 2034 is an article co-authored by Petitioner’s declarant, William Singhose, Ph.D., and Erika Biediger that was introduced as an exhibit during the deposition of that witness. *Id.*

During subsequent discussions, Patent Owner agreed to withdraw three of the exhibits it submitted with its Sur-reply, Exhibits 2031, 2032, and 2035. *See* Ex. 3002. Patent Owner did not agree to withdraw Exhibit 2033 (the transcript of the deposition of Dr. Singhose) or Exhibit 2034, and Petitioner does not seek to strike either of these two exhibits. *See id.* Instead, Petitioner merely seeks solely to strike portions of Patent Owner’s Sur-reply that allegedly rely on Exhibit 2034 for improper purposes. *See id.*

In the April 27, 2026 e-mail, Patent Owner affirmatively asks us to withdraw Exhibits 2031, 2032, and 2035, and to permit it to file a corrected Sur-reply that omits references to these three exhibits. *See* Ex. 3002. Patent Owner also asserts that its Sur-reply cites Exhibit 2034 for the permissible purpose of “testing” the deposition testimony of Dr. Singhose, and asks that the Board simply disregard any remaining portions of the Sur-reply that improperly rely on Exhibit 2034. *See id.*

II. DISCUSSION

Our trial practice rules provide that “[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.” 37 C.F.R. § 42.23(b). As both parties appear to recognize, an exhibit like

Exhibit 2034 that is introduced during a deposition may, in some circumstances, be submitted with a deposition transcript that accompanies a sur-reply. But such an exhibit generally may only be relied on insofar as it bears on the credibility of the accompanying deposition testimony; such an exhibit generally *may not* be used to support a party's arguments on the merits. *See, e.g., Microsoft Corp. v. XI Discovery, Inc.*, IPR2025-00253, Paper 45 (PTAB Apr. 24, 2026).

Having considered the parties positions, the Board will grant Patent Owner's unopposed request to withdraw Exhibits 2031, 2032, and 2035. The Board will also expunge Patent Owner's Sur-reply (Paper 36) and grant Patent Owner's unopposed request to file a corrected Sur-reply that deletes references to these three exhibits.

Patent Owner is further instructed to delete from its corrected Sur-reply any arguments that rely on Exhibit 2034 for an improper purpose, such as supporting Patent Owner's arguments on the merits. In preparing this corrected Sur-reply, Patent Owner may delete material that was present in its original Sur-reply, but shall not add new material or make substantive modifications to material that it retains from the original Sur-reply. Patent Owner shall file this corrected Sur-reply within three business days of entry of this Order.

If, after Patent Owner files a corrected Sur-reply, Petitioner believes that Patent Owner is continuing to rely on Exhibit 2034 for an improper purpose, or that Patent Owner's corrected Sur-reply is otherwise improper (e.g., because it contains new material in violation of this Order), Petitioner should meet and confer with Patent Owner. Petitioner may then, if necessary, request authorization to file a motion to strike this corrected Sur-reply.

III.ORDER

For the foregoing reasons, it is hereby

ORDERED that Exhibits 2031, 2032, and 2035 are expunged;

FURTHER ORDERED that Paper 36 (Patent Owner's Sur-reply) is expunged;

FURTHER ORDERED that Patent Owner file a corrected Sur-reply in accordance with the above instructions and guidance not later than three business days after entry of this Order; and

FURTHER ORDERED that if Petitioner contends that Patent Owner's corrected Sur-reply continues to rely on Exhibit 2034 for improper purposes or is otherwise improper, Petitioner should meet and confer with Patent Owner and may, if necessary, request authorization to file a motion to strike the corrected Sur-reply.

IPR2025-00629

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