

From: [Director Discretionary Decision](#)
To: [Piana, Jayne C.](#); [Director Discretionary Decision](#)
Cc: [QC-Cisco](#); [Foster, Theo](#); [Hauglum, Patricia](#); [Robinson, Erick S.](#); [DiBernardo, Ian G.](#); [Laidlaw, Harold S.](#); [Partridge, Jayme](#); [Dunn, Patrick M.](#); [Theo Foster IPR](#); [David McCombs IPR](#); [Calmann Clements IPR](#)
Subject: RE: IPR2025-01088 -- Request for authorization to file two-page Reply
Date: Monday, September 29, 2025 2:59:15 PM

Patent Owner is authorized to file a 2-page reply in IPR2025-01088 due no later than Wednesday, October 1, 2025, limited to addressing the arguments raised below. Petitioner is authorized to file a 2-page sur-reply due no later than Friday, October 3, 2025.

From: Piana, Jayne C. <JPiana@brownrudnick.com>
Sent: Monday, September 29, 2025 1:06 PM
To: Director_Discretionary_Decision <Director_Discretionary_Decision@uspto.gov>
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Subject: IPR2025-01088 -- Request for authorization to file two-page Reply

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Dear Honorable Director,

Patent Owner ("PO") respectfully requests authorization to file a two-page Reply limited to three discrete points in Petitioner's opposition to PO's DD brief.

PO submits good cause exists for each of these points.

1. Petitioner's arguments on settled expectations (Opposition, 2-4): Good cause exists because (1) Petitioner has cited to new caselaw that issued since the filing of PO's DD brief; (2) Petitioner's claim that it has had knowledge of the '859 Patent since March 2011 directly contradicts Petitioner's representation in the district court; and (3) Petitioner's claim that it "did not expect enforcement of the '859 patent" is contradicted by the record. If granted, PO will file exhibits to show Petitioner's Opposition contradicts its representation in the district court.
2. Petitioner's arguments regarding alleged Examiner error (Opposition, 4-7): Good

cause exists because Petitioner's argument that the Examiner of the '859 Patent failed to conduct a thorough search is unsupported, contradicts the record, and is inconsistent with the law.

3. Petitioner's arguments regarding national economic and security interests (Opposition, 9-11): Good cause exists because Petitioner's arguments improperly attempt to tie its interests to those of the United States Government on national security. These arguments are contradicted by the record and could not have been anticipated by PO.

PO submits this request for authorization to file a reply complies with the process outlined by the Director: "Parties should request authorization to file a reply or sur-reply as soon as practicable due to the time constraints on the discretionary considerations process. A party requesting briefing should send an email request, with a copy to counsel for all parties, to Director_Discretionary_Decision@USPTO.gov." <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>

That said, PO provided its proposed communication to Petitioner. Petitioner, however, insisted that PO preview its arguments by "explaining [the] basis" for each. PO responded that it does not "intend to litigate this issue before approaching the Director" and "propose[d] a call on Monday morning to discuss." Petitioner replied with its response below. Because of the need to request authorization "as soon as practicable," PO is approaching the Director now. PO objects to Petitioner's statement as improperly raising substantive argument and mischaracterizing PO's position.

Petitioner's response: "Petitioner asked Patent Owner to identify the allegedly unsupported, contradictory, inconsistent, and improper statements in Petitioner's brief (Paper 11). Patent Owner refused. Patent Owner also insisted that it had no obligation to meet-and-confer with Petitioner's counsel regarding its allegations. Patent Owner's refusal to identify any allegedly objectionable statement and unwillingness to engage in constructive dialogue show that "good cause" does not exist. Petitioner therefore opposes the request except for the portion seeking to address new caselaw. If the Board grants Patent Owner's request, Petitioner respectfully requests (1) that Petitioner be authorized to file a sur-reply of equal length to address Patent Owner's new arguments; (2) that briefing be limited to addressing only new caselaw that issued since the filing of Patent Owner's brief (Paper 9) on August 25, 2025; and (3) if briefing is not so limited, that no new exhibits be authorized, since Patent Owner seeks to address the existing record."

Sincerely,

brownrudnick
Jayne C. Piana
Partner

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