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On behalf of **Imperative Care, Inc.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IMPERATIVE CARE, INC.,
Petitioner,

v.

INARI MEDICAL INC.,
Patent Owner.

Case No. IPR2025-01264
Patent No. 12,016,580

PETITIONER'S MOTION TO STRIKE

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Pursuant to the Board's authorization (Exhibit 3002), Petitioner moves to strike (1) Exhibit 2010 filed for the first time with PO's Sur-Reply (Paper 31) and (2) the new arguments based on Exhibit 2010 at page 18 of PO's Sur-Reply.

I. THE BOARD SHOULD STRIKE THE NEW EVIDENCE AND ARGUMENTS BASED ON THE BOARD'S SUR-REPLY RULES

PO's Exhibit 2010 is a supplemental expert declaration by PO's expert, Brian Brown, that spans 92 pages and includes two attachments. (*See* Exhibit 2010.) PO filed Exhibit 2010 for the first time in this IPR with PO's Sur-Reply. PO did not request authorization from the Board prior to filing Exhibit 2010.

PO cites 23 paragraphs of Exhibit 2010 in its Sur-Reply. (PO Sur-Reply (Paper 31) at 18 (citing Exhibit 2010, ¶¶78-89, 98-108).) The paragraphs include unsupported opinions from Mr. Brown regarding problems that may occur if a person of ordinary skill in the art ("POSITA") combined components of Garrison's Figure 34 embodiments with certain pumps. (*Id.*) Mr. Brown did not offer testimony on these issues in his initial declaration (Exhibit 2001) submitted with the POPR or his supplemental declaration (Exhibit 2005) submitted with the POR. Similarly, PO never mentioned these issues in its POPR or its POR. As a result, Petitioner has had no opportunity to respond to these new arguments and evidence in this IPR and is prejudiced by their untimely submission.

Petitioner moves to strike this new evidence (Exhibit 2010) and argument

pursuant to 37 C.F.R. § 42.23(b) and the Consolidated Trial Practice Guide (“TPG”).

The Board’s Trial Rules state, “A ***sur-reply may only respond to arguments 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) (emphasis added); *see also* TPG, 73-74 (“The sur-reply may not be accompanied by new evidence...[and] should only respond to arguments made in reply briefs, comment on reply declaration testimony, or point to cross-examination testimony.”); *see also Id.*, 74 (clarifying “respond” meaning).) PO’s new evidence and argument raised for the first time with the Sur-Reply violate these rules and should be stricken from the record.

PO’s untimely filing of this evidence is unfair and prejudicial to Petitioner.

The Board has explained:

The reason for limiting the scope of a reply (and surreply) is to promote procedural fairness and mark an end to motion practice. Parties are charged with bringing their best argument forward in a manner that provides the opposing party an opportunity to fairly test those arguments. Belatedly raising arguments for the first time in the final brief (i.e., here in the MTA Reply and Surreply) does not permit occasion to challenge those arguments in the absence of an endless parade of additional briefing.

3M Co. v. Westech Aerosol Corp., IPR2018-00576, 2019 WL 1878045, at *3 (Apr. 26, 2019); *see also Trane U.S. Inc. v. SEMCO, LLC*, IPR2018-00514, 2019 WL

1757866, at *3 (Apr. 17, 2019) (“The reason for limiting the scope of a sur-reply is simple – to promote procedure fairness and prevent sandbagging.”).

For these reasons, the Board consistently strikes new evidence and arguments filed with a Sur-Reply. *See e.g., Satco Prods., Inc. v. Seoul Semiconductor Co., Ltd.*, IPR2020-00836, 2021 WL 5197168, at *32 (Oct. 22, 2021) (striking new exhibits filed with PO’s sur-reply); *Intel Corp. v. ParkerVision, Inc.*, IPR2020-01265, 2022 WL 212407, at *26-28 (Jan. 21, 2022) (same); *Hamilton Techs. LLC v. Fleur Tehrani*, IPR2020-01199, 2021 WL 6339598, at *21-22 (Dec. 28, 2021) (same); *Lenovo Holding Co. v. Dodots Licensing Solutions LLC*, IPR2019-00988, 2020 WL 3067544, at *1-4 (Jun. 9, 2020) (ordering PO to “file a revised sur-reply that includes no citation to the improperly submitted evidence”).

In the parties’ correspondence regarding the untimeliness of Exhibit 2010 and PO’s new arguments, PO asserted that Exhibit 2010 and the new arguments are responsive to arguments raised for the first time in Petitioner’s Reply. However, even if that were true, “the TPG’s prohibition on new evidence submitted with a sur-reply does not include an exception for evidence responsive to evidence submitted with a reply (beyond submitting new cross-examination testimony of a reply witness).” *Apple Inc. v. Parus Holdings, Inc.*, IPR2020-00686, 2021 WL 2384355, at *2 (P.T.A.B. June 10, 2021); *see also Hamilton Techs. LLC*, 2021 WL 6339598,

at *21 (“There is no automatic ‘responding to new arguments’ exception to th[e] prohibition” against submitting new evidence with a sur-reply.). Thus, PO’s assertion that Exhibit 2010 and its new Sur-Reply arguments respond to arguments raised in Petitioner’s Reply does not excuse their untimely submission. *Id.*

II. PETITIONER IS PREJUDICED BY PO’S UNTIMELY EVIDENCE AND ARGUMENTS

PO asserted in the parties’ correspondence that Petitioner is not prejudiced by the new evidence and arguments because Petitioner deposed Mr. Brown regarding Exhibit 2010 during a consolidated deposition for this IPR and the IPR for which Exhibit 2010 was prepared and submitted (IPR2025-01025). PO is incorrect.

Because PO waited to raise Exhibit 2010 and its new arguments until its Sur-Reply, Petitioner has not had an opportunity to respond to the exhibit and arguments in this IPR as it did in the other IPRs. Further, Petitioner had no knowledge that PO intended to rely on Mr. Brown’s opinions in Exhibit 2010 or PO’s new Sur-Reply arguments in this IPR when it deposed Mr. Brown. Thus, Petitioner could not have cross-examined Mr. Brown about how his opinions in Exhibit 2010 relate to the ’580 patent and claims in this IPR. Notably, the ’580 patent has a different specification than the patents at issue in the IPR where PO timely submitted Exhibit 2010, and for which Mr. Brown was deposed. This is the precise prejudice the Board’s limits on Sur-Reply evidence and argument are intended to avoid. *See, e.g.,*

3M Co., IPR2018-00576, 2019 WL 1878045, at *3 (explaining that “[b]elatedly raising arguments for the first time in the final brief ... does not permit occasion to challenge those arguments in the absence of an endless parade of additional briefing”). Petitioner’s deposition of Mr. Brown does not cure the prejudice.

III. PO WOULD NOT SUFFER UNDUE PREJUDICE BY GRANTING THIS MOTION

Striking the evidence and argument would not unfairly prejudice PO. The Board’s Scheduling Order warned PO that any arguments not raised in the POR “may be deemed waived.” (Paper 12, 10.) Moreover, the Board’s rules “are readily available and [PO] knew or should have known that submitting” new evidence and arguments with a Sur-Reply was prohibited. *Satco*, IPR2020-00836, 2021 WL 5197168, at *32. PO could have included Mr. Brown’s testimony from Exhibit 2010 in either of Mr. Brown’s declarations that were timely filed in this case (Exhibits 2001 and 2005). Similarly, PO could have included its untimely attorney arguments about Garrison’s Figure 34 embodiments in its POR. PO chose not to do so. PO cannot now claim to be prejudiced by enforcement of the Board’s express prohibition on submitting new evidence and argument with its Sur-Reply.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board strike Exhibit 2010 and the portions of the Sur-Reply identified above.

IPR2025-01264

Imperative Care, Inc. v. Inari Medical, Inc.

Dated: July 31, 2026

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to 37 C.F.R. § 42.6(e), a true and correct copy of **PETITIONER’S MOTION TO STRIKE** is being served electronically on July 31, 2026, to the e-mail addresses shown below:

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