

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
U.S. Patent No. 12,016,580

**PATENT OWNER'S OPPOSITION
TO PETITIONER'S MOTION TO STRIKE**

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Patent Owner's Opposition to Petitioner's Motion to Strike

Pursuant to the Board's authorization (Exhibit 3002), Patent Owner opposes Petitioner's Motion to Strike and respectfully requests denial of the Motion. The Motion should be denied because Exhibit 2010 is not offered as new substantive evidence, but instead to provide the necessary context for cross-examination testimony that Petitioner itself elicited and then mischaracterized in its Reply. As the Consolidated Trial Practice Guide ("TPG") recognizes, "striking ... a portion of a party's brief is an exceptional remedy that the Board expects will be granted rarely." This is not such an exceptional case.

Patent Owner's Response ("POR") explains that Petitioner's mixing and matching of different aspects of Garrison (EX1006) is contrary to Garrison's disclosure and the technical understanding of a person of ordinary skill in the art. POR, pp. 27, 30, 38, 43. In response, Petitioner's Reply ("Reply") mischaracterizes the cross-examination testimony of Patent Owner's expert, Brian Brown. *See* Sur-Reply, pp. 17-18 (responding to Reply pp. 16-17 and explaining that Mr. Brown's testimony addressed a hypothetical); EX1063, 163:13-164:4. That mischaracterization invited and necessitated Patent Owner's limited reliance on Exhibit 2010 and related Sur-Reply arguments to correct the record.

Exhibit 2010 is Mr. Brown's expert declaration submitted as EX2008 in related IPR2025-01025. Petitioner requested and took a single deposition of Mr. Brown for this IPR and two related IPRs, including IPR2025-01025 and IPR2025-

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01021. *See* EX1063, 1. During that cross-examination, Petitioner introduced the declaration now filed here as Exhibit 2010. EX1063, 43:18-23 (“Q: What is this document?”; “A: It is my supplemental declaration for IPR ’910.”), 139:4-6 (“A: ... I did provide an opinion on ... Garrison in my declaration for the ’910 patent.”). Petitioner therefore put Exhibit 2010 into the cross-examination record before relying on a distorted account of that testimony in its Reply.

Patent Owner should be permitted to rely on Exhibit 2010 to respond to Petitioner's mischaracterizations. Mr. Brown's declaration testimony in Exhibit 2010 provides context for his cross-examination testimony, and Patent Owner's limited remarks about Exhibit 2010 are directly responsive to Petitioner's mischaracterization in the Reply. Allowing Patent Owner's use of Exhibit 2010 in the Sur-Reply therefore corrects the record without unfairly prejudicing Petitioner. Accordingly, Patent Owner requests that the Motion to Strike be denied.

I. A party is permitted to submit exhibits and arguments in sur-reply that provide context for deposition testimony.

The Board has denied a Petitioner's motion to strike exhibits filed with a Patent Owner's Sur-Reply that provide context for deposition testimony. For example, in *Edwards Lifesciences Corp. v. Cardiovalve Ltd.*, the Board denied the Petitioner's motion to strike exhibits that Patent Owner introduced during cross-examination of Petitioner's declarant and arguments related to those exhibits in

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Patent Owner's sur-reply. IPR2021-00383, Paper 60, pp. 85, 86 (PTAB July 18, 2022). Allowing exhibits "only for the limited purpose of allowing the Board to understand the context of the cross-examination," is "consistent with 37 C.F.R. § 42.23(b) because the exhibits are not being admitted as substantive evidence" and because "37 C.F.R. § 42.23(b) allows the submission of a deposition transcript, and allowing exhibits to be used in this manner merely allows them to be used as an adjunct to reading and understanding the deposition transcript." *Id.*, p. 87; *see, also, e.g., Meta Platforms, Inc. v. Eight Khz, LLC*, IPR2023-01003, Paper 61, pp. 78, 79 (PTAB Jan. 7, 2025) (the "exceptional remedy" of striking portions of Patent Owner's sur-reply related to exhibits the Patent Owner filed with the sur-reply was unwarranted because the exhibits were "'only for the limited purpose of allowing the Board to understand the context of the cross-examination.'" (internal citation omitted); *Ascend Performance Materials Operations LLC v. Samsung SDI Co.*, IPR2020-00349, Paper 53, pp. 12–13 (PTAB July 15, 2021) ("[I]f exhibits are introduced during a deposition for the purposes of testing the witness' testimony, a party should be able to submit those exhibits with the transcript, so the Board has the full context available in order to evaluate the testimony.")

Here, Exhibit 2010 provides context for Mr. Brown's cross-examination testimony and, especially, to Petitioner's *mischaracterization* of that testimony in its Reply. In fact, it was Petitioner, not Patent Owner, who introduced EX2010 as an

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exhibit when deposing Mr. Brown during a single deposition for the three related IPRs. *See* EX1063, 43:18-23, 139:4-6. Petitioner's request to now strike EX2010 should be denied.

II. Patent Owner would suffer undue prejudice if the Motion to Strike is granted; Petitioner is not prejudiced by allowing Patent Owner's arguments and evidence responsive to Petitioner's mischaracterization of testimony.

Petitioner introduced Exhibit 2010 during Mr. Brown's deposition here and then mischaracterized that testimony in its Reply. Excluding the full record of that cross-examination and striking Patent Owner's response relying on that evidence would unfairly prejudice Patent Owner. Petitioner's unfair mischaracterization of Mr. Brown's testimony would remain unchecked and the record of Mr. Brown's testimony would be incomplete.

In contrast, denying the motion would not prejudice Petitioner. Patent Owner's remarks and evidence disputing Petitioner's mischaracterization of testimony do not constitute a new theory. Petitioner complains that it had no opportunity to respond to arguments and evidence associated with Exhibit 2010. Motion, p.1. But it is Petitioner who made Exhibit 2010 relevant by mischaracterizing Mr. Brown's cross-examination testimony, during which Petitioner introduced the document now filed as Exhibit 2010. Petitioner had ample opportunity to consider Exhibit 2010, especially given the overlapping subject

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matter between this IPR and Petitioner's IPR2025-01025, and deposed Mr. Brown on the declaration in a combined deposition.

Patent Owner's Sur-Reply includes two citations to Exhibit 2010, both found in a single paragraph at pages 17-18 of the Sur-Reply. Both citations are directly responsive to Petitioner's mischaracterization of Mr. Brown's deposition testimony. Accordingly, Exhibit 2010 and discussion thereof in Patent Owner's Sur-Reply should not be stricken.

III. Conclusion

For at least the foregoing reasons, Patent Owner respectfully requests that the Board deny Petitioner's Motion to Strike.

Respectfully submitted,

Dated: August 14, 2026

By: / Joseph P. Hamilton /
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on August 14, 2026, a copy of
**PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO
STRIKE** was served upon the below-listed counsel by electronic mail:

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Dated: August 14, 2026

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