

From: [Steven Avena](#)
To: [Trials](#)
Cc: [Ryan D. Levy](#); [Seth Ogden](#); [Mark A. Kilgore](#); [Litigation](#); [Timothy Getzoff](#); [Megan N. Borgemoen](#); [Randy Roeser](#); [Sam Rague](#)
Subject: RE: PGR2023-00008: Request for Authorization to file Motion to Strike
Date: Thursday, March 28, 2024 12:48:35 PM
Attachments: [image001.png](#)

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Dear Honorable Board:

We are writing to confirm that we are available for a conference on Friday, March 29th or Monday, April 1st.

Opposition to Petitioner's Request for Authorization to file Motion to Strike. Regarding Petitioner Huhtamaki's request for authorization to file a motion to strike arguments, Patent Owner provides the following observations in opposition, which have been communicated to Petitioner in advance of Petitioner's email.

1. In response to Petitioner's point below, Patent Owner's ("PO") arguments submitted in PO's Reply to Opp. RMTA ("Reply") are timely and responsive to Patent Owner's RMTA ("RMTA") and Petitioner Huhtamaki's Opposition to the RMTA ("Opposition").
 - a. Petitioner Huhtamaki misstates Patent Owner's arguments within pages 1–6 of the Reply, and claims that they pertain to the plain and ordinary meaning of a tie layer. However, PO's arguments within pages 1–6 of the Reply instead address whether both Riis's .17 mil EAA layer and .65 mil LDPE layer are layers of a multi-layer tie layer. Specifically, PO's arguments set forth PO's position that Riis's .17 mil EAA and .65 mil LDPE layer are not layers of a multi-layer tie layer and support this position with evidence that, in other proceedings, Petitioner Huhtamaki made statements to the Board consistent with statements made by PO in this proceeding, and which contradict the statements now being made by Petitioner on this point.
 - b. Substitute Claim 14 in the RMTA replaces the language "the tie layer comprises one or more layers" with the narrower "the tie layer comprises a first layer and a second layer." In response to this amended language, Petitioner's Opposition asserts that Riis, in view of Wypych, discloses an exemplary film having a tie layer made with two individual layers, the first being EAA and the second being LDPE. Opposition, 2.
 - c. Substitute Claim 16–18 in the RMTA recite new loading ranges for the layers of the tie layer claimed in Substitute Claim 14. In response to this amended language, Petitioner's Opposition asserts that a POSITA would have found it obvious to modify Riis's films with Holzmuller to optimize the interacting thicknesses of [Riis's] layers of [Riis's] tie layer. Opposition, 7, 8.
 - d. Petitioner's opposition includes new arguments for a motivation to modify/combine Riis with Holzmuller, arguing that Holzmuller (a reference introduced in Petitioner's Opposition) would have motivated a POSITA to tailor and optimize the thicknesses, and thus the loadings, of the intermediate bonding layers as applied to Riis's LDPE and EAA

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tie layers to achieve desired properties of the multilayered intermediate tie layers disclosed in Holzmuller. Opposition, 10. Thus, Petitioner's Opposition relies on Riis's .17 mil EAA layer and .65 mil LDPE layer as being layers of a multi-layer tie layer to support a motivation to apply the thickness ranges for the bonding layers in Holzmuller to Riis's .17 mil EAA layer and .65 mil LDPE layer.

- e. Petitioner's Opposition includes new arguments for a reasonable expectation of success in combining Riis and Holzmuller, arguing that Holzmuller teaches relative interacting thicknesses for intermediate bonding layers (i.e., tie layers) that result in synergistic effects for the overall film. Opposition, 13. Thus, Petitioner's Opposition relies on Riis's .17 mil EAA layer and .65 mil LDPE layer being layers of a multi-layer tie layer to support a reasonable expectation of success in applying the thickness ranges for the bonding layers in Holzmuller to Riis's .17 mil EAA layer and .65 mil LDPE layer.
- f. Accordingly, the arguments made within pages 1–6 of the Reply are responsive at least to the amendments submitted in the RMTA, Petitioner's new motivation to modify/combine arguments in the Opposition, and Petitioner's new reasonable expectation of success arguments in the Opposition.

All the best,

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From: Sam Raque <sar@iplawgroup.com>

Sent: Thursday, March 28, 2024 10:43 AM

To: Trials <trials@USPTO.gov>

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Subject: PGR2023-00008: Request for Authorization to file Motion to Strike

External Email

Dear Honorable Board:

In PGR2023-00008 challenging U.S. Pat. No. 11,260,624 ("the '624 Patent"), Petitioner Huhtamaki writes to seek authorization to file a motion to strike certain arguments as exceeding the scope of reply or being untimely from Patent Owner Adapa's Reply to Opposition to Revised Motion to Amend.

Specifically, and pursuant to the PTAB's Consolidated 2019 Trial Practice Guide (pp. 80-81), Huhtamaki seeks to strike the following arguments from the record:

1. Adapa's untimely arguments (and belatedly presented evidence) asserted in a manner nonresponsive to the present motions to amend, in which Adapa argues that Petitioner Huhtamaki's patent prosecution before the USPTO supports

Patent Owner's arguments regarding the plain and ordinary meaning of a tie layer as originally set forth in its Preliminary Response and substantially unaltered throughout this proceeding. PO Reply to Opp. RMTA, 1-6; see *also* PO Prelim. Resp., 51, 52, 55; PO Resp., 9-16, 32-75; PO Sur-Reply, 1-19.

The Parties are available for a conference call with the Board Friday, March 29th or Monday, April 1st to discuss Huhtamaki's request. In the event the Board is not available either day, Huhtamaki respectfully requests a conference call at the earliest opportunity convenient for the Board to address Huhtamaki's request.

Regards,

Samuel A. Raque | *Registered Patent Attorney*

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