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Paper 50
Date: March 21, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYNGENTA CROP PROTECTION AG,
Petitioner,

v.

UPL LTD.,
Patent Owner.

PGR2023-00017
Patent 11,445,727 B2

Before SUSAN L. C. MITCHELL, ZHENYU YANG, and MICHAEL A. VALEK, *Administrative Patent Judges*.

YANG, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On March 19, 2024, Petitioner filed Paper 48, entitled "Petitioner's Motion to Exclude Certain Opinions of Jacobsen's Declaration," and Paper 49, entitled "Petitioner's Motion to Exclude Evidence."

On March 20, via an email to the Board, Patent Owner sought authorization for leave to file a motion to strike Paper 48. Ex. 3007. According to Patent Owner, "a party is authorized to file only a single motion to exclude of no more than 15 pages." *Id.* (citing *Coastal Indus., Inc. v. Shower Enclosures America, Inc.*, IPR2017-00573, Paper 77, 2–3 (PTAB Sept. 17, 2018)).

In response, on March 21, Petitioner requests to withdraw Paper 49. Ex. 3008. According to Petitioner, Patent Owner does not object this request. *Id.* Petitioner's unobjected request to withdraw Paper 49 is granted.

Although Patent Owner does not object Petitioner's request to withdraw Paper 49, it states the withdrawal "does not cure the improper use of Paper 48." Ex. 3007. According to Patent Owner, Paper 48 is improper because "a party may not use a motion to exclude to argue the merits of the case, such as presenting new arguments in response to the Sur-Reply." *Id.*.

It is true that "[a] motion to exclude must explain why the evidence is not admissible" and "may not be used to challenge the sufficiency of the evidence to prove a particular fact." Consolidated Trial Practice Guide, 79. Here, however, a motion to strike is unnecessary because the Board is capable of distinguishing arguments on the admissibility and those on the sufficiency of the evidence. *See* Consolidated Trial Practice Guide, 80 (explaining that "striking the entirety or a portion of a party's brief is an exceptional remedy" because "[i]n most cases, the Board is capable of identifying new issues or belatedly presented evidence"). Moreover, Patent

Owner will have sufficient opportunity to identify any argument it believes to be improper in its opposition to Paper 48. For these reasons, Patent Owner's request for leave to file a motion to strike Paper 48 is denied.

Accordingly, it is

ORDERED that Petitioner's request to withdraw Paper 49 is granted; and

FURTHER ORDERED that Patent Owner's request for leave to file a motion to strike Paper 48 is denied.

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