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Subject: PGR2023-00017; Request for Authorization to file Motion to Strike Paper 48
Date: Wednesday, March 20, 2024 6:37:10 PM

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Dear Honorable Board,

Patent Owner UPL writes to seek authorization for leave to file a motion to strike Paper 48, Petitioner's "Motion to Exclude Certain Opinions of Jacobsen's Declaration," which Petitioner filed in addition to its expressly styled Paper 49 "Motion to Exclude." UPL's opposition to Paper 48 would otherwise be due March 26, 2024.

More specifically, Patent Owner seeks leave to file a motion to strike Paper 48 on two grounds.

First, a party is authorized to file only a single motion to exclude of no more than 15 pages as confirmed in *Coastal Indus., Inc. v. Shower Enclosures America, Inc.*, IPR2017-00573, Paper 77 at 2-3 (PTAB Sept. 17, 2018) ("[o]nly one motion to exclude is pre-authorized for a given due date" and multiple motions to exclude "will not be considered") (*citing* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,767 (Aug. 14, 2012) (article "a" used with "motion to exclude"); 37 CFR 42.24.

Second, 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. *See* 2019 Consolidated Trial Practice Guide, 79.

Patent Owner has conferred with Petitioner but Petitioner has not agreed to withdraw Paper 48 or not oppose leave for a motion to strike Paper 48. Petitioner instead offered to withdraw Paper 49, but that does not cure the improper use of Paper 48. Patent Owner thus still seeks leave to file a motion to strike Paper 48. Both parties are available for a call with the Honorable Board Friday March 22, 2024, from 9:00am to 1:00pm ET.

Respectfully,
Kenneth Guerra

Kenneth S. Guerra
Associate

Pronouns: He, Him, His

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