

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ADVANCECELL PTY LTD.,
Petitioner,

v.

SCIENCONS AS and ARTBIO, INC.,
Patent Owner.

PGR2025-00029
Patent 12,125,603 B2

Before GRACE KARAFFA OBERMAN, JO-ANNE M. KOKOSKI, and
KIMBERLY McGRAW, *Administrative Patent Judges*.

McGRAW, *Administrative Patent Judge*.

ORDER

Denying Petitioner's Request for Authorization to File
a Motion to Strike Portions of Patent Owner's Sur-Reply
37 C.F.R. § 42.5

On June 20, 2026, Petitioner sent an email to the Board (Ex. 3002) requesting authorization under 37 C.F.R. § 42.20(b) to file a motion to strike portions of Patent Owner's Sur-Reply (Paper 29). Petitioner contends that Patent Owner's Sur-Reply contains "improper new arguments concerning claims 4 and 5 and the Hassfjell-Hoff reference addressed in the Petition." Ex. 3002, 1. In the email, "Petitioner requests authorization to file a motion to strike not to exceed five pages, and proposes that Patent Owner be authorized to file an opposition not to exceed five pages." *Id.* Petitioner's email identifies the material that Petitioner asserts constitutes improper new arguments, including citations to Patent Owner's cross-examination of its expert which Petitioner asserts was outside the scope of cross examination. *Id.*

Petitioner's email also states that "Patent Owner opposes and disagrees the identified argument is improperly new." *Id.* at 1–2. Additionally, the email states that Patent Owner does not oppose a 1 page supplemental Petitioner's reply to Patent Owner's Sur-Reply and a 1 page Patent Owner supplemental sur-reply in response. Petitioner does not respond to this offer. *Id.* at 2.

Upon consideration of the materials cited by the parties and the parties' arguments, we are not persuaded that a motion to strike or additional briefing is warranted. The Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019), 80–81, *available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated> ("Trial Practice Guide"), explains:

In most cases, the Board is capable of identifying new issues or belatedly presented evidence when weighing the evidence at the close of trial, and disregarding any new issues or belatedly

presented evidence that exceeds the proper scope of reply or sur-reply. As such, striking the entirety or a portion of a party's brief is an exceptional remedy that the Board expects will be granted rarely. In some cases, however, whether an issue is new or evidence is belatedly presented may be beyond dispute, or the prejudice to a party of waiting until the close of the evidence to determine whether new issues or belatedly presented evidence has been presented may be so great, that the facts may merit considering a motion to strike. For example, where a reply clearly relies on a new theory not included in prior briefing, and where addressing this new theory during oral hearing would prejudice the opposing party, striking the portion of the brief containing that theory may be appropriate.

To the extent that Patent Owner's Sur-reply contains improper arguments, the Board ordinarily is capable of determining whether new arguments were raised and disregarding any improper reply evidence. The parties may address the propriety of the Sur-reply arguments during oral hearing in this proceeding if they choose.¹ We will determine whether Patent Owner made improper new arguments to the extent necessary in the final written decision and will take the parties' arguments into account in doing so.

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's request for authorization to file a motion to strike portions of Patent Owner's Sur-Reply is *denied*.

¹ See Trial Practice Guide 73–74 (“Sur-replies should only respond to arguments made in reply briefs, comment on reply declaration testimony, or point to cross-examination testimony.”).

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