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Subject: PGR2025-00029 - Petitioner's Request for Authorization to File Motion to Strike

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Dear Honorable Board,

Petitioner respectfully requests authorization under 37 C.F.R. § 4220(b) to file a motion to strike portions of Patent Owner's Sur-Reply (Paper 28).

Section III.A.4 of the Sur-reply raised improper new arguments concerning claims 4 and 5 and the Hassfjell-Hoff reference addressed in the Petition, and substantially prejudices Petitioner by depriving it of the ability to address these new arguments. In particular, Patent Owner's sur-reply relies on the discussion of a vacuum pump in the Hassfjell-Hoff reference and its expert's cross-examination testimony about that vacuum pump. Patent Owner's Response did not address claim 4 at all, and its argument on claim 5 mentioned nothing about a vacuum pump. These new arguments in the sur-reply are not responsive to any argument made in Petitioner's Reply, which like the Response included no argument for claim 4 and did not address any vacuum pump. Additionally, the subject matter of Mr. Conroy's deposition testimony relied on in the Patent Owner's Sur-Reply was elicited by Patent Owner on redirect over Petitioner's objection as outside the scope of the cross examination. The relevant passages of the sur-reply are at page 15 beneath header 4 ("Dependent claims 4-5 and 14-15") and at page 16, the first two lines and the entire last sentence of the second full paragraph ("The challenges additionally fail . . .").

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.

Patent Owner's Position: Patent Owner opposes and disagrees the identified argument is improperly new. For example, the surreply (pp. 15-16) points out that Petitioner's attempt to supplement a petition argument during the Conroy deposition backfired. See e.g., EX1023 84:20-87:20 (Petitioner counsel attempting to conflate sealing with "vacuum equipment to avoid leakage" from the petition); 95:18-98:4 (redirect confirming vacuum equipment does not seal); 99:5-101:17 (re-cross regarding the same). Petitioner's omission in Reply of damaging testimony (that Petitioner elicited) reflects on its duty of candor, but it does not immunize evidence from consideration. Additionally, the requested 5 pages of briefing is not commensurate with the identified argument that spans less than 1 page of the surreply. Given Petitioner's argumentative email, Patent Owner does not oppose a 1 page supplemental Petitioner's reply and a 1 page supplemental surreply in response.

While the parties do not believe a conference call is necessary, the parties are available for a conference call to discuss this request at any time next Monday, Tuesday or Wednesday.

Sincerely,

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