

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ABB, INC.
Petitioner

v.

ROY-G-BIV CORPORATION
Patent Owner

Case IPR2013-00062
Case IPR2013-00282
Patent 6,516,236 B1

Before THOMAS L. GIANNETTI, *Administrative Patent Judge*.

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

This Order is entered in response to several matters raised by Patent Owner.

1. On December 20, 2013, Patent Owner requested, via email, authorization by the Board to file a surreply to certain arguments set forth in Petitioner's Reply to Patent Owner's Response, Paper 44, filed October 28, 2013. Those arguments relate to whether two references proffered by Petitioner (Gertz and Morrow) qualify as prior art, or whether Patent Owner has successfully "antedated" the references by showing prior conception and diligence. Petitioner, in a separate email to the Board, opposed the request.

After due consideration, the request is denied. The Board's rules make no provision for surreplies. Moreover, this case does not warrant making an exception. Both Petitioner and Patent Owner have already had an opportunity to brief this issue, which was initially raised by Patent Owner. To the extent they wish to be heard further, the parties may address the issue at the oral hearing on January 23, 2014.

2. Attached to Patent Owner's December 20 email to the Board were two papers: a motion for leave and a surreply. Those submissions were not authorized. The parties are cautioned to refrain from submitting further unauthorized motions and briefs.

3. On December 19, 2013, Patent Owner filed a motion to exclude certain evidence. Paper 59. The Scheduling Order in this proceeding (Paper 24) requires such motions to be filed by Due Date 4, December 12, 2013. We note the Board's subsequent Decision (Paper 15) in IPR2013-00282 joining that proceeding with IPR2013-00062 permits the parties to modify this date, but expressly orders that "in the event of any changes to the schedule, the parties inform the Board promptly in the form of a notice of stipulation." The Board does not have any record of

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receiving such a notice or stipulation, nor has Patent Owner requested an extension of the due date for motions to exclude. Thus, Patent Owner's motion is dismissed as untimely.

4. On December 20, 2013, Patent Owner filed a motion for observations on cross-examination. Paper 61. Patent Owner did not seek prior authorization for this motion, as is required by our rules. 37 C.F.R. § 42.20(b). The motion is, therefore, dismissed and the paper will be expunged.

In view of the foregoing, it is

ORDERED that Patent Owner's request to file a surreply to Paper 44 is denied;

FUTHER ORDERED that Patent Owner's Motion to Exclude Evidence (Paper 59) is dismissed;

FURTHER ORDERED that Patent Owner's Motion for Observations on Cross Examination (Paper 61) is dismissed and will be expunged.

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