

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PNY TECHNOLOGIES, INC.
Petitioner

v.

PHISON ELECTRONICS CORP.
Patent Owner

Case IPR2013-00472¹
Patent 7,518,879

Before KEVIN F. TURNER, STEPHEN C. SIU, and
RAMA G. ELLURU, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

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

¹ Case IPR2014-00150 has been joined with this proceeding.

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A conference call in the above proceeding was held on September 19, 2014, between respective counsel for Petitioner and Patent Owner, and Judges Turner, Siu and Elluru. The purpose of the call was to discuss objections raised by Patent Owner. In brief, Patent Owner alleges that Petitioner's Reply raises new arguments and evidence (Exhibit 1007) contrary to 37 C.F.R. § 42.23(b), and mischaracterizes the record. Petitioner denies those allegations.

As explained during the call, whether a reply contains arguments or evidence that is outside the scope of a proper reply under 37 C.F.R. § 42.23(b) is left to the determination of the Board. The Board will determine whether a reply and evidence are outside the scope of a proper reply and evidence when the Board reviews all of the parties' briefs and prepares the final written decision. If there are improper arguments and evidence presented with a reply, the Board may exclude the reply and related evidence, for example. For all of these reasons, we will take under consideration any alleged violations in due course with respect to Petitioner's Reply and Exhibit 1007, upon considering the record at the end of the trial.

We also explained that Patent Owner may be able to file a motion to exclude evidence with respect to Exhibit 1007, if a proper basis for exclusion exists. In addition, the Trial Practice Guide makes it clear that a motion to exclude must explain why the evidence is not admissible and that it is not the proper venue to argue the sufficiency of evidence. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012).

We also indicated that if Patent Owner believed that portions of the Reply mischaracterize the record, arguments to that effect can be raised at the oral hearing. We further indicated that an order on the oral hearing will be forthcoming, irrespective of whether Petitioner files a request for oral hearing.

Patent Owner also requested to be allowed to submit definitions of the word “indentation” from other dictionary sources already relied upon in this proceeding. Petitioner’s Exhibit 1007 provided the dictionary definition of “indentation” from the American Heritage Dictionary of the English Language. Patent Owner wishes to submit definitions of the same from Collins English Dictionary and Webster New World Dictionary, where those sources have already been cited for other terms. Petitioner had no objections to such a submission, and we authorize the filing of an exhibit with definitions of “indentation,” where any such exhibit submitted should provide the cited definitions without exposition or commentary.

We also remind the parties that a request for a conference call should be brief and should not expound on the substantive issues to be discussed in the conference call itself.

Order

It is

ORDERED that Patent Owner is authorized to file an exhibit containing definitions of “indentation” from other dictionary sources already relied upon in this proceeding, without exposition or commentary.

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