

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

SURPASS TECH INNOVATION LLC,
Patent Owner.

Case IPR2015-00885
Patent US 7,202,843

Before SALLY C. MEDLEY and BETH Z. SHAW, *Administrative Patent Judges*.

SHAW, *Administrative Patent Judge*.

ORDER

On Request to File Reply to Preliminary Response or Motion to Strike
37 C.F.R. § 42.5

This matter is before the Board on a request by Petitioner for authorization to file a Reply to Patent Owner's Preliminary Response or a Motion to Strike portions of the Preliminary Response. On June 26, 2015,

IPR2015-00885
Patent 7,202,843

Patent Owner filed a Preliminary Response, arguing in part that institution of an *inter partes* review is barred by 35 U.S.C. § 325(d). Paper 7. During a conference call held on July 2, 2015, between counsel for the parties and Judges Medley and Shaw, Petitioner requested authorization to file a Reply to the Preliminary Response to address Patent Owner's arguments, or to file a Motion to Strike portions of the Preliminary Response. Patent Owner opposes.

Petitioner seeks to rebut Patent Owner's arguments in the Preliminary Response, including arguments regarding 35 U.S.C. § 325(d). Section 325(d) states, in relevant part, that "[i]n determining whether to institute or order a proceeding under this chapter, chapter 30, or chapter 31, the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office." Thus, the Director has discretion to consider whether the petition includes the same or substantially the same prior art or arguments as previously were presented to the Office.

Generally, a petitioner is not authorized to file a reply to a patent owner preliminary response. Based on the record before us, we determine that Petitioner has not demonstrated sufficiently that we should deviate from the normal procedure for this proceeding. Upon consideration of the positions of the parties, Petitioner is not authorized at this time to file a Reply or to file a Motion to Strike portions of the Preliminary Response.

IPR2015-00885
Patent 7,202,843

It is

ORDERED that Petitioner's request to file a Reply to the Preliminary Response or a Motion to Strike is denied.

ORDERED that the parties will file a copy of the transcript of the July 2, 2015 phone call in due course.

IPR2015-00885
Patent 7,202,843

PETITIONER:

Robert Pluta
Amanda Streff
William Barrow
Mayer Brown LLP
rpluta@mayerbrown.com
astreff@mayerbrown.com
wbarrow@mayerbrown.com

PATENT OWNER:

Wayne Heldge
Michael Casey
Davidson Berquist Jackson & Gowdey, LLP
whelge@dbjg.com
mcasey@dbjg.com