UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

J SQUARED, INC. d/b/a UNIVERSITY LOFT COMPANY,

Petitioner,

v.

SAUDER MANUFACTURING COMPANY,

Patent Owner

Case IPR2015-00958

Patent 8,585,136

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

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I. Patentee Improperly Conflates Its Claims & Specification

Patentee's Response completely disregards the proper tenets of claim construction. Patentee argues for so many features to be incorporated from the specification into its broadly drafted claims that even its employee-witnesses lose track. Each one of Patentee's employee-witnesses offers up different specification limitations for importation to the claims. (Ex. 1025 49:3-67:8; Ex. 1027 30:15 - 45:9; and Ex. 1028 46:10-67:7, all discussing Ex.1022).

This jumble of inconsistent testimony is not surprising given that Patentee failed to instruct any of its employee-witnesses on proper claim construction practices. None of Patentee's witnesses reviewed the intrinsic record (prosecution history) of the '136 patent before construing the claims. (Ex. 1025 31:9-32:6; Ex.1027 30:7-14; and Ex. 1028, 18:19-19:5, all discussing Ex. 1013). "Prosecution history, while not literally within the patent document, serves as intrinsic evidence for purposes of claim construction. This remains true in construing patent claims before the PTO." *Tempo Lighting, v. Tivoli, LLC,* 742 F. 3d 973, 977 (Fed. Cir. 2014). The Board should not accord any weight to this conflicting and incomplete claim construction testimony.

Even if the incomplete claim analysis could be excused, which it cannot, Patentee provides no cogent explanation as to why its proposed mishmash of unclaimed specification features must be imported to its claims. This is because

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