

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RPX CORPORATION,
Petitioner,

v.

APPLICATIONS IN INTERNET TIME, LLC,
Patent Owner.

IPR2015-01750 (Patent 8,484,111 B2)
IPR2015-01751 (Patent 7,356,482 B2)
IPR2015-01752 (Patent 7,356,482 B2)

Before SCOTT R. BOALICK, *Chief Administrative Patent Judge*,
JACQUELINE WRIGHT BONILLA, *Deputy Chief Administrative Patent Judge*,
and SCOTT C. WEIDENFELLER, *Vice Chief Administrative Patent Judge*.

WEIDENFELLER, *Vice Chief Administrative Patent Judge*

ORDER
Conduct of the Proceeding
Denying Authorization to File Motion to Strike Petitioner's Reply
*37 C.F.R. § 42.5*¹

¹ This decision pertains to Cases IPR2015-01750, IPR2015-01751, and IPR2015-01752, as Petitioner's Requests for Rehearing are substantively the same in each case. Citations are to the paper numbers in Case IPR2015-01750.

IPR2015-01750 (Patent 8,484,111 B2)

IPR2015-01751, IPR2015-01752 (Patent 7,356,482 B2)

On November 2, 2020, counsel for Applications in Internet Time, LLC (“Patent Owner”) requested authorization to file a motion to strike arguments in Petitioner’s Reply in support of its request for rehearing (Paper 136). On November 6, 2020, the panel held a conference call with the parties to consider Patent Owner’s request. A court reporter was present for the conference, and Patent Owner filed a copy of the transcript as an exhibit. Ex. 1107 (“Tr.”).

Patent Owner requests authorization to strike two portions of Petitioner’s Reply that allegedly raise new issues. First, Patent Owner contends that Petitioner’s Reply presents, for the first time, statutory arguments alleging that the panel change order (Paper 124) is a violation of 35 U.S.C. § 6(c) and 5 U.S.C. § 554(d). Tr. 5:3–20. Second, Patent Owner contends that Petitioner’s Reply presents a new explanation of how RPX meets the protected interest requirement of the due process clause. *Id.* at 5:21–6:18.

Petitioner opposes Patent Owner’s request and asserts that both of the arguments identified by Patent Owner are responsive to arguments made by Patent Owner in its Response. *Id.* at 7:15–18. Specifically, Petitioner asserts that the statutory arguments included in its Reply are in response to Patent Owner’s assertions that “[n]o equivalent statutory or regulatory provisions are applicable to board proceedings, and certainly not determination decisions by the board.” *Id.* at 9:3–5. Petitioner further asserts that its Reply explains the basis for RPX’s protected interest in response to Patent Owner’s assertion that RPX lacked such an interest. *Id.* at 7:19–8:2.

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Our Consolidated Trial Practice Guide² states that “striking the entirety or a portion of a party’s brief is an exceptional remedy that the Board expects will be granted rarely.” Consolidated Trial Practice Guide at 80–81. However, striking the entirety or a portion of a party’s brief may be appropriate where it is “beyond dispute” that an issue raised therein is new. *Id.* We have reviewed Petitioner’s Reply in view of the arguments set forth by Patent Owner and we are not persuaded that Petitioner’s Reply clearly or indisputably presents new arguments as urged by Patent Owner.

Accordingly, we decline to exercise our discretion to authorize Patent Owner to file a motion to strike portions of Petitioner’s Reply.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner’s request for authorization to file a Motion to Strike Petitioner’s Reply is denied.

² Accessible at <https://www.uspto.gov/TrialPracticeGuideConsolidated>; *see also* 84 Fed. Reg. 64,280 (Nov. 21, 2019).

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IPR2015-01751, IPR2015-01752 (Patent 7,356,482 B2)

For PETITIONER:

Richard F. Giunta
Elisabeth H. Hunt
Randy J. Pritzker
Michael N. Rader
WOLF, GREENFIELD & SACKS, P.C.
RGiunta-PTAB@wolfgreenfield.com
EHunt-PTAB@wolfgreenfield.com
RPritzker-PTAB@wolfgreenfield.com
MRader-PTAB@wolfgreenfield.com

For PATENT OWNER:

Steven C. Sereboff
Jonathan Pearce
SOCAL IP LAW GROUP LLP
ssereboff@socalip.com
jpearce@socalip.com
uspto@socalip.com

Andrea Pacelli
Robert Whitman
KING & WOOD MALLESONS
Andrea.Pacelli@us.kwm.com
robert.whitman@us.kwm.com