

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOGLE LLC,  
Petitioner,

v.

BLACKBERRY LTD.,  
Patent Owner.

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Case IPR2017-00912 (Patent 8,745,149 B2)  
Case IPR2017-00913 (Patent 8,402,384 B2)<sup>1</sup>

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Before ROBERT J. WEINSCHENK and RICHARD H. MARSCHALL,  
*Administrative Patent Judges.*

WEINSCHENK, *Administrative Patent Judge.*

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

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<sup>1</sup> This Order pertains to both of these cases. Therefore, we exercise our discretion to issue a single Order to be filed in each case. The parties are not authorized to use this style heading for any subsequent papers.

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## I. INTRODUCTION

On April 23, 2018, Judges Weinschenk and Marschall held a telephone conference call with counsel for Google LLC (“Petitioner”) and counsel for BlackBerry Limited (“Patent Owner”). A court reporter was present on the conference call. This order summarizes statements made during the conference call. A more complete record may be found in the court reporter’s transcript, which is to be filed by Patent Owner as an exhibit.

## II. ANALYSIS

Patent Owner requested authorization to file a sur-reply in response to Petitioner’s Reply (IPR2017-00912, Paper 20; IPR2017-00913, Paper 20) in each of the above-listed proceedings. Specifically, Patent Owner argued that Petitioner’s Reply in each of the above-listed proceedings contains a new argument. For IPR2017-00912, Patent Owner identified Petitioner’s argument on pages 20–22 of the Reply, which relates to statements made during prosecution of a related application before the European Patent Office (“EPO”), as a new argument. For IPR2017-00913, Patent Owner identified Petitioner’s argument on pages 17–23 of the Reply, which relates to the disclosure of a reference known as Cadiz, as a new argument. Patent Owner requested a 3-page sur-reply for IPR2017-00912 and a 5-page sur-reply for IPR2017-00913. Patent Owner stated that it did not need to submit any new evidence with a sur-reply in either proceeding. Patent Owner also stated it could file a sur-reply in both proceedings within one (1) week of an order authorizing a sur-reply.

Petitioner opposed Patent Owner’s request to file a sur-reply in each of the above-listed proceedings. Specifically, Petitioner asserted that the

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arguments in the Reply in each of the above-listed proceedings properly respond to arguments made in Patent Owner's Response (IPR2017-00912, Paper 17; IPR2017-00913, Paper 17). Petitioner also requested that, to the extent we authorize Patent Owner to file a sur-reply, we also authorize Petitioner to file a sur-sur-reply.

After considering the respective positions of the parties, we authorize Patent Owner to file a 3-page sur-reply in each of the above-listed proceedings by May 8, 2018. The scope of the sur-reply for IPR2017-00912 is limited to addressing Petitioner's argument on pages 20–22 of the Reply. The scope of the sur-reply for IPR2017-00913 is limited to addressing Petitioner's argument on pages 17–23 of the Reply. The sur-reply in each proceeding may cite to evidence already of record, but Patent Owner may not submit any new evidence with either sur-reply. Because Patent Owner is not authorized to submit any new evidence with either sur-reply, we determine that no sur-sur-reply is necessary at this time.

### III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner's request for authorization to file a sur-reply in each of the above-listed proceedings is *granted*;

FURTHER ORDERED that Patent Owner may file a 3-page sur-reply in each of the above-listed proceedings by May 8, 2018, in accordance with the instructions above; and

FURTHER ORDERED that no sur-sur-reply is authorized.

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