

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SPRINT SPECTRUM L.P.,
Petitioner,

v.

GENERAL ACCESS SOLUTIONS, LTD.,
Patent Owner.

Cases¹

IPR2017-01885 (Patent 7,173,916 B2)

IPR2017-01887 (Patent 6,891,810 B2)

IPR2017-01889 (Patent 7,230,931 B2)

Before MELISSA A. HAAPALA, *Acting Vice Chief Administrative Patent Judge*, and KALYAN K. DESHPANDE and DAVID M. KOHUT, *Administrative Patent Judges*.

DESHPANDE, *Administrative Patent Judge*.

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

¹ This Decision applies to each of the listed cases. The parties are not authorized to use a multiple case caption.

IPR2017-01885 (Patent 7,173,916 B2)
IPR2017-01887 (Patent 6,891,810 B2)
IPR2017-01889 (Patent 7,230,931 B2)

On November 14, 2018, the Board held a conference call with Sprint Spectrum L.P. (“Petitioner”) and General Access Solutions, LTD. (“Patent Owner”). Patent Owner requested leave to file (1) a sur-reply to Petitioner’s Reply (Paper 41²) to the Patent Owner’s Response (Paper 31) in all three proceedings, (2) a motion to strike new arguments in Petitioner’s Reply in IPR2017-01885 and IPR2017-01887, and (3) a declaration in response to evidence and testimony provided in Petitioner’s Reply in IPR2017-01885 and IPR2017-01887.

Patent Owner and Petitioner conferred and agreed to Patent Owner’s filing of a sur-reply. Patent Owner and Petitioner further agreed that Patent Owner’s sur-reply will be due on November 20, 2018. The Board’s Trial Practice Guide Update³ provides that sur-replies to petitioner’s reply “normally will be authorized.” Trial Practice Guide Update, 14.

Accordingly, we authorize Patent Owner to file a sur-reply, of no more than fifteen (15) pages, limited to responding to Petitioner’s Reply, due on November 20, 2018. The sur-reply may “only respond to arguments made in [the] reply brief[], comment on reply declaration testimony, or point to cross-examination testimony . . . [and] may address the institution decision if necessary to respond to petitioner’s reply.” *Id.*

² Unless otherwise noted, all citations are to IPR2017-01885. IPR2017-01887 and IPR2017-01889 include similar papers.

³ Office Patent Trial Practice Guide, August 2018 Update, 83 Fed. Reg. 39,989 (Aug. 13, 2018).

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Patent Owner seeks leave to file a motion to strike new arguments raised in Petitioner's Reply to Patent Owner's Response. Specifically, Patent Owner represents that Petitioner has abandoned its original argument and has presented a new argument in support of its position. For these reasons, we authorize Patent Owner to file a motion to strike, of no more than five (5) pages, due on Monday, November 19, 2018, and similarly authorize Petitioner to file an opposition to Patent Owner's motion to strike, of no more than five (5) pages, due on Monday November 26, 2018.

Patent Owner further requested to file a declaration in support of its sur-reply. Patent Owner specifically argued that the declaration supports the arguments submitted in the sur-reply. Petitioner opposed Patent Owner's submission of a new declaration arguing that Patent Owner was able to cross examine Petitioner's declarant and, in this manner, could have obtained the same evidence it wishes to submit in the new declaration. Petitioner further argues that the Trial Practice Guide Update specifically cautions against the submission of new evidence with the sur-reply. Indeed the Trial Practice Guide Update specifies that the "sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross examination of any reply witness." Trial Practice Guide Update, 14. Accordingly, we do not authorize Patent Owner to submit new declaration testimony.

In consideration of the foregoing, it is hereby:

ORDERED that, Patent Owner is authorized to file a sur-reply in each of these proceedings, of no more than fifteen (15) pages, limited to

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IPR2017-01887 (Patent 6,891,810 B2)
IPR2017-01889 (Patent 7,230,931 B2)

responding to arguments presented in Petitioner's Reply, due November 20, 2018;

FURTHER ORDERED that Patent Owner is authorized to file a motion to strike in each of the IPR2017-01885 and IPR2017-01889 proceedings, of no more than five (5) pages, due November 19, 2018;

FURTHER ORDERED that Petitioner is authorized to file an opposition to Patent Owner's motion to strike, of no more than five (5) pages, due November 26, 2018; and

FURTHER ORDERED that Patent Owner is not authorized to file a new declaration in support of the sur-reply.

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