

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS INC.,  
Petitioner,

v.

VILOX TECHNOLOGIES LLC,  
Patent Owner.

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Case IPR2018-00044  
Patent 7,302,423 B2

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Before SALLY C. MEDLEY, ROBERT J. WEINSCHENK, and  
JOHN D. HAMANN, *Administrative Patent Judges*.

HAMANN, *Administrative Patent Judge*.

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

I. DISCUSSION

On November 2, 2018, a conference call was conducted among respective counsel for Unified Patents Inc. (“Petitioner”) and Vilox Technologies, LLC (“Patent Owner”), and Judges Medley, Weinschenk, and Hamann. The purpose of the call was twofold.

First, Petitioner requested our authorization to file a Sur-Reply to respond to Patent Owner’s Reply (Paper 45) regarding Patent Owner’s Motion to Amend certain challenged claims (Paper 27). Petitioner submitted that such a Sur-Reply is provided for in the August 2018 Trial Practice Guide Update (<https://go.usa.gov/xU7GP>). Patent Owner does not oppose Petitioner’s request for a Sur-Reply.

We find that the panel could benefit from Petitioner’s response to the arguments raised in Patent Owner’s Reply regarding Patent Owner’s Motion to Amend in adjudicating the issues in this proceeding. Accordingly, we grant Petitioner’s request for authorization to file a Sur-Reply to Patent Owner’s Reply.

Second, Petitioner requested our authorization to file a motion to have stricken from Patent Owner’s Sur-Reply to the Petition citations to Patent Owner’s Exhibit 2027 (Oct. 22, 2018 Declaration of Wesley W. Chu, PH.D) and Exhibit 2029 (Oct. 22, 2018 Declaration of Lucille Marie De Bellis). Petitioner argued that the Sur-Reply’s citing to these exhibits was contrary to our October 2, 2018 Order (Paper 44), which authorized Patent Owner’s Sur-Reply. Patent Owner argued that to the extent that its Sur-Reply citing to Exhibits 2027 and 2029 is not proper, Patent Owner should be allowed to file an amended Sur-Reply, excising the citations to Exhibits 2027 and 2029.

We agree with Petitioner that Patent Owner’s Sur-Reply citing to Exhibits 2027 and 2029 is contrary to our October 2, 2018. The Order provides that Patent Owner’s “Sur-Reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.” Paper 44, 2. Thus, the portions of Patent Owner’s Sur-Reply that cite to Exhibits 2027 and 2029 are improper — these exhibits (i) were filed on October 22, 2018 along with the Sur-Reply and (ii) are not deposition transcripts. Hence, we find that Patent Owner should amend its Sur-Reply to comply with our October 2, 2018 Order.

## II. ORDER

It is hereby ORDERED that Petitioner may file a Sur-Reply to Patent Owner’s Reply regarding the pending Motion to Amend on or before November 13, 2018;

FURTHER ORDERED that Petitioner’s Sur-Reply is limited to five pages;

FURTHER ORDERED that Petitioner’s Sur-Reply is limited to responding to the Reply;

FURTHER ORDERED that Petitioner’s Sur-Reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness; and

FURTHER ORDERED that Patent Owner shall file on or before November 7, 2018 an Amended Sur-Reply excising the citations to Exhibits 2027 and 2029, and without otherwise changing the Sur-Reply’s substance.

IPR2018-00044  
Patent 7,302,423 B2

PETITIONER:

David M. O'Dell  
David L. McCombs  
Thomas Kelton  
John Russell Emerson  
Scott Cunning  
HAYNES AND BOONE, LLP  
[david.odell.ipr@haynesboone.com](mailto:david.odell.ipr@haynesboone.com)  
[david.mccombs.ipr@haynesboone.com](mailto:david.mccombs.ipr@haynesboone.com)  
[thomas.kelton.ipr@haynesboone.com](mailto:thomas.kelton.ipr@haynesboone.com)  
[russell.emerson.ipr@haynesboone.com](mailto:russell.emerson.ipr@haynesboone.com)  
[scott.cunning.ipr@haynesboone.com](mailto:scott.cunning.ipr@haynesboone.com)

Jonathan Stroud  
Roshan Mansinghani  
UNIFIED PATENT INC.  
[jonathan@unifiedpatents.com](mailto:jonathan@unifiedpatents.com)  
[roshan@unifiedpatents.com](mailto:roshan@unifiedpatents.com)

PATENT OWNER:

John K. Harrop  
[harrop@vapatent.com](mailto:harrop@vapatent.com)