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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIZIO, INC.,

Petitioner,

v.

NICHIA CORP.,

Patent Owner.

Case No. IPR2018-00386, IPR2018-00437

TELEPHONIC CONFERENCE CALL BEFORE
JUDGE NATHAN A. ENGELS, JUDGE SALLY C. MEDLEY, and
JUDGE WILLIAM V. SAINDON
Thursday, January 17, 2019
3:00 p.m.

Job No.: 225431

Pages: 1 - 22

Reported By: Charlotte Lacey, RPR, CSR No. 14224

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A P P E A R A N C E S

(All appearances telephonic)

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1 P R O C E E D I N G S

2 JUDGE ENGELS: Good afternoon. This is Judge
3 Engels. And with me on the line are Judges Medley and
4 Judge Saindon. We're here this afternoon to discuss
5 IPR2018-00386 and IPR2018-00437.

6 Who's on the line for the parties?

7 MR. ZOLTICK: Yeah. Good afternoon, Your
8 Honor. It's Marty Zoltick on behalf of the patent owner
9 Nichia.

10 MS. HIGGINS: Hi. Good afternoon, Your Honor.
11 This is Gabrielle Higgins and Christopher Bonny on the
12 line on behalf of petitioner Vizio, Inc.

13 MR. ZOLTICK: And, Your Honor, there should
14 also be a court reporter on the line.

15 THE REPORTER: Yes. This is Charlotte Lacey
16 with Planet Depos.

17 MR. JONES: And, Your Honors, you also have
18 Michael Jones and Mark Rawls also for patent owner.
19 Thank you.

20 JUDGE ENGELS: Thank you. At the end of the
21 telephone conference today, if -- if the parties could
22 submit a transcript of the hearing as an exhibit, we
23 would appreciate that.

24 MR. ZOLTICK: Yes. That's fine.

25 JUDGE ENGELS: I understand we have a number

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1 of things to discuss today, as -- as mentioned in your
2 e-mails.

3 Let's begin with patent owner's request. I
4 understand patent owner is requesting leave to file a
5 sur-reply to patent owner's response. I understand from
6 the e-mail that petitioner opposes the request.

7 The practice guidelines generally allow a
8 sur-reapply as a matter of course. Is there a
9 particular reason that this sur-reply -- this request
10 for a sur-reply is opposed?

11 MS. HIGGINS: Your Honor, this is Gabrielle
12 Higgins for petitioner, and we fully acknowledge what's
13 in the August Trial Practice Guide. When we met and
14 conferred with patent owner, we asked patent owner if it
15 would be agreeable to the petitioner having a three-page
16 sur-reply. And our position is petitioner doesn't
17 oppose patent owner's request for sur-replies on the
18 condition that the board also authorizes
19 sur-sur-replies. And just like patent owner argues that
20 the sur-reply replaces observations on cross, as -- as
21 you know, Your Honor, the scheduling orders here, which
22 have been in place for over six months, already provide
23 petitioner with a response to observations on cross,
24 which we believe, in this transitional period, the board
25 has the discretion to replace with a sur-sur-reply.

1 Since the scheduling order already provides
2 petitioner with a paper, taking away a briefing
3 opportunity would be unfair, especially given that
4 petitioner has the burden here, and we believe would
5 effectively be sanctioning the petitioner.

6 And I would like to point the board to
7 GN Hearing versus Oticon. The same argument that I just
8 made was made in GN Hearing, and the board granted
9 petitioner's request for sur-sur-replies, which was also
10 in this transitional period. That is IPR2017-01927.
11 And the transcript from that teleconference where the
12 sur-sur-replies were granted is Exhibit 1018 at pages 8,
13 9.

14 We also wanted to point out that in another
15 proceeding involving the parties, IPR2017-01608,
16 paper 47, at page 3, the panel there granted
17 petitioner's request for a sur-sur-reply.

18 And so our position is not that we oppose. We
19 do acknowledge that the August Trial Practice Guide
20 does, you know, talk about replacing the sur-reply --
21 excuse me -- the observations on cross with the
22 sur-reply. But we believe since the scheduling orders
23 also have a response to that observation on cross, that
24 petitioner should get a sur-sur-reply. And -- and we
25 limited that, Your Honor, to three pages in each

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