

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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EXOCAD GMBH AND EXOCAD AMERICA, INC.,  
Petitioner,

v.

3SHAPE A/S,  
Patent Owner.

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Case IPR2018-00788  
Patent 9,336,336 B2

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Before SALLY C. MEDLEY, IRVIN E. BRANCH, and  
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

BRANCH, *Administrative Patent Judge*.

ORDER

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

On May 14, 2019, the Board received an email message from Petitioner’s counsel requesting a conference call and an authorization to file a motion to strike two portions of Patent Owner’s Sur-Reply (Paper 31), namely:

(1) Patent Owner’s claim construction argument at pages 3–4 (starting at the first full paragraph on page 3, beginning with words “Where both . . .”) addressing the part of the Board’s construction in the Institution Decision in which the Board stated that its construction “does not preclude subsequent merging or fusing together of the separate data representations after alignment, provided the 2D image and the 3D model remain separate at least momentarily after having been ‘aligned’” (Paper 7 at 8–9); and

(2) Section II(C).

Ex. 3001.

The email states that “Petitioner believes that such portions of Patent Owner’s Sur-Reply contain new arguments that were not presented in the Response (Paper 23), and thus are improperly raised for the first time in Patent Owner’s Sur-Reply” and that “Patent Owner has indicated that it opposes the filing of the motion to strike.” *Id.*

We determine that having a separate motion to strike, and all that that entails (e.g., an opposition and reply), would not further the goal of securing the just, speedy, and inexpensive resolution of this proceeding. 37 C.F.R. § 41.1(b). We have noted these sections for the record and will consider Petitioner’s arguments when we review the briefs for the Final Written Decision.

ORDER

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Accordingly, it is  
ORDERED that Petitioner's request for authorization to file a motion  
to strike is *denied*.

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