

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner,

v.

BRADIUM TECHNOLOGIES LLC,
Patent Owner.

Case IPR2018-00952
Patent 9,253,239 B2

Before BRIAN J. McNAMARA and MINN CHUNG,
Administrative Patent Judges.

CHUNG, *Administrative Patent Judge.*

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

I. DISCUSSION

A conference call was held on October 24, 2018, between counsel for the respective parties and Judges Chung and McNamara. The parties requested the conference call to address several issues, including Petitioner's request for authorization to file a reply to Patent Owner's Preliminary Response.

Petitioner's Reply to Patent Owner's Preliminary Response

Petitioner seeks authorization to file a reply to Patent Owner's Preliminary Response to address factual assertions and legal arguments made in the Patent Owner's Preliminary Response regarding real-parties-in-interest in light of the Federal Circuit's decisions in *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336 (Fed. Cir. 2018) ("*AIT*") and *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237 (Fed. Cir. 2018). During the conference call, Petitioner argued that it could not have addressed these issues in the Petition because *AIT* and related cases were decided after the Petition was filed. Patent Owner opposes Petitioner's request, arguing, *inter alia*, that the underlying standard regarding real-parties-in-interest has not changed and that Petitioner had an opportunity to address the issues in Petitioner's pre-institution discovery responses and deposition testimony of Petitioner's CEO.¹ If a reply is authorized, Patent Owner seeks authorization to file a sur-reply.

¹ We granted Patent Owner's Motion to extend the due date for Patent Owner's Preliminary Response to September 24, 2018 in part to allow for

Having reviewed the record and considered the parties' positions, we are persuaded that Petitioner has shown good cause justifying the filing of a reply. *See* 37 C.F.R. § 42.108(c). Accordingly, during the conference call, we authorized the filing of Petitioner's reply to Patent Owner's Preliminary Response, not to exceed 12 pages and limited to addressing the factual assertions and legal arguments made in the Patent Owner's Preliminary Response regarding real-parties-in-interest, and to be filed no later than November 7, 2018.

We denied Patent Owner's request for authorization of filing of a sur-reply, but noted that Patent Owner may seek authorization again, if necessary, after Petitioner's reply is filed.

Objections to Evidence

During the conference call, we granted Petitioner's unopposed request for authorization for filing of Petitioner's notice of withdrawal of Petitioner's Objections to Evidence (Paper 21) in their entirety, as well as Patent Owner's unopposed request for an extension of the deadline to serve supplemental evidence under 37 C.F.R. § 42.64(b)(2) until November 1, 2018.

Patent Owner requests authorization for filing of the supplemental evidence that was served on Petitioner in response to Petitioner's Objections to Evidence (Paper 21). Patent Owner argues good cause exists for filing of

pre-institution discovery regarding real-parties-in-interest in light of the *AIT* decision. *See* Paper 8; Paper 11.

the supplemental evidence because we may consider the supplemental evidence in determining whether to institute a review and the parties' may refer to the evidence in their pre-institution briefing.

Under our rules, Patent Owner may respond with supplemental evidence that supports the admissibility of the objected-to evidence. 37 C.F.R. § 42.64(b)(2). Supplemental evidence should not be offered to support substantive arguments on the merits. *See Handi Quilter, Inc. and Tacony Corp. v. Bernina International AG*, Case IPR2013-00364, slip op. at 2–3 (PTAB June 12, 2014) (Paper 30). Accordingly, during the conference call, we denied Patent Owner's request to file the supplemental evidence served on Petitioner in response to Petitioner's Objections to Evidence.

On October 25, 2018, Petitioner filed a Notice of Withdrawal of Objections to Evidence. Paper 22. As there are no outstanding objections to evidence, the issue is now moot and there is no need for further consideration of Patent Owner's request for authorization to file the supplemental evidence or extension of the deadline to serve supplemental evidence.

II. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's request for authorization to file a reply to Patent Owner's Preliminary Response is *granted*;

FURTHER ORDERED that the reply is limited to addressing the factual assertions and legal arguments made in the Patent Owner's Preliminary Response regarding real-parties-in-interest;

FURTHER ORDERED that the reply is not to exceed 12 pages;
FURTHER ORDERED that the reply is to be filed no later than
November 7, 2018;

FURTHER ORDERED that Petitioner may not file new evidence with
the reply;

FURTHER ORDERED that no sur-reply is authorized at this time;
and

FURTHER ORDERED that Petitioner's unopposed request for
authorization for filing of Petitioner's notice of withdrawal of Petitioner's
Objections to Evidence (Paper 21) in their entirety is *granted*.

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