

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHOPIFY, INC.,
Petitioner,

v.

DDR HOLDINGS, LLC,
Patent Owner.

Case IPR2018-01011 (Patent 9,639,876 B1)
Case IPR2018-01012 (Patent 9,043,228 B1)
Case IPR2018-01014 (Patent 8,515,825 B1)¹

Before PATRICK M. BOUCHER and ALYSSA A. FINAMORE,
Administrative Patent Judges.

BOUCHER, *Administrative Patent Judge.*

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

On May 23, 2019, a conference call was held with counsel for the parties regarding a request by Patent Owner for authorization to file a

¹ The parties are not authorized to use this style of caption.

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motion to strike portions of Petitioner’s Reply in each of these proceedings. By email correspondence to the Board on May 15, 2019, Patent Owner contends that Petitioner’s Replies improperly include the following new arguments:

1. Arguments relying on the reference Moore’s teaching that the Price URL can be attached to any “style component” and related implications.
2. Arguments relying on Moore’s teachings use of “Java servlets” in designing Web pages and servlets in interpreting the Price URL, comparison between those, and related implications.
3. Arguments that Moore’s servlet interpreting the Price URL must or does contain merchant-specific “look and feel” data and that such data must be or is stored on the store builder/transaction server.
4. Arguments relying on Moore’s teaching of adjusting “Java classes” to change look and feel and related implications.

Patent Owner indicates that its proposed motion to strike would “seek the alternative relief of being permitted to present targeted testimony with its sur-replies.” Although the 2018 Revised Trial Practice Guide (“Guide”), available at https://www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf permits a party to request authorization to file a motion to strike, the Guide also explains that “striking the entirety or a portion of a party’s brief is an exceptional remedy that the Board expects will be granted rarely.” Guide 17–18. In this instance, Patent Owner concedes that Petitioner has offered no new testimonial evidence to support the Reply arguments it identifies, which Petitioner contends are responsive to the arguments presented in Patent Owner’s Responses. The character of the arguments identified by Patent Owner is also plainly directed to factual issues regarding what is disclosed by Moore. We are

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mindful that Petitioner retains the burden in these proceedings. To the extent that Petitioner's Reply arguments are not properly responsive to Patent Owner's arguments and/or insufficiently supported by evidence, they will either not be considered or will be accorded reduced weight as appropriate.

Accordingly, we deny Patent Owner's request. Because of the time taken to arrange a conference call with the parties in response to Patent Owner's request, we extend the time for filing Sur-Replies in each of these proceedings. We also extend the time for filing Sur-Replies in related proceedings IPR2018-01008, IPR2018-01009, and IPR2018-01010, which was set as part of a consolidated Scheduling Order in all six proceedings. Patent Owner may explain as part of its Sur-Replies why it believes Petitioner's arguments are new and therefore improper, but we do not enlarge the word-count limit for those Sur-Replies.

It is

ORDERED that Patent Owner's request for authorization to file a motion to strike portions of Petitioner's Replies in these proceedings is *denied*;

FURTHER ORDERED that DUE DATE 3 for each of these proceedings, as well as for IPR2018-01008, IPR2018-01009, and IPR2018-01010, is extended to June 3, 2019; and

FURTHER ORDERED that a copy of this order be entered into the record for each of IPR2018-01008, IPR2018-01009, and IPR2018-01010.

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