

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

IPR2019-00251
Patent 6,993,049 B2

Before SALLY C. MEDLEY, JEFFREY S. SMITH, and GARTH D. BAER,
Administrative Patent Judges.

BAER, *Administrative Patent Judge.*

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

On March 3, 2020, Petitioner contacted the Board by e-mail requesting authorization to file a motion to strike portions of Patent Owner’s Sur-Reply in this proceeding, because, according to Petitioner, Patent Owner’s Sur-Reply reproduces content from and discusses new evidence that was not previously submitted as evidence in this proceeding.

The panel does not authorize the requested Motion to Strike. As explained in the Board’s Trial Practice Guide, “[i]n most cases, the Board is capable of identifying new issues or belatedly presented evidence when weighing the evidence at the close of trial, and disregarding any new issues or belatedly presented evidence that exceeds the proper scope of reply or sur-reply.” *See* Consolidated Trial Practice Guide 80 (November 2019), available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>. The Trial Practice Guide instructs that “striking the entirety or a portion of a party’s brief is an exceptional remedy that the Board expects will be granted rarely.” *Id.* We decline at this time to exclude the sur-reply submissions.

The propriety or impropriety of the identified portions of the reply will be addressed, if necessary, in our Final Written Decision. To the extent the panel determines that any item identified by Patent Owner warrants additional briefing, an Order will be issued, providing such instruction to the parties. Furthermore, although at this time we do not deem it necessary to resolve this issue prior to the Final Written Decision or via formal briefing, should either party request a hearing, the parties may address this issue during oral argument.

In view of the foregoing, it is hereby:

ORDERED that Petitioner is not authorized to file a motion to strike.

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