

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MEDTRONIC, INC. AND MEDTRONIC VASCULAR, INC.,
Petitioner,

v.

TELEFLEX LIFE SCIENCES LIMITED,
Patent Owner.

IPR2020-01341 (Patent 8,142,413 B2)
IPR2020-01342 (Patent 8,142,413 B2)
IPR2020-01343 (Patent RE46,116 E)
IPR2020-01344 (Patent RE46,116 E)

Before JAMES A. TARTAL and CHRISTOPHER G. PAULRAJ,
Administrative Patent Judges.

TARTAL, *Administrative Patent Judge.*

ORDER¹
Conduct of the Proceeding
37 C.F.R. § 42.5

¹ This Order addresses issues that are identical in each of the above-captioned proceedings. We therefore exercise our discretion to issue one Order to be filed in each proceeding. The proceedings have not been consolidated, and the Parties are not authorized to use this style heading in any subsequent papers.

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In each of these proceedings, Teleflex Life Sciences Limited (“Patent Owner”) seeks to file a motion to strike certain portions of the Reply of Medtronic, Inc., and Medtronic Vascular, Inc. (“Petitioner”), as well as certain evidence relied on by Petitioner, as purportedly improper new arguments and evidence, or “in the alternative to file a paper that identifies improper new evidence and argument.” *See* Ex. 3001 (email from counsel for Patent Owner dated September 14, 2021). Patent Owner represents that it has conferred with Petitioner, and Petitioner opposes the request. *See id.*

Upon consideration, Patent Owner’s request for authorization to file a motion to strike is denied. As the Consolidated Trial Practice Guide (“CTPG”)² explains, “[i]n most cases the Board is capable of identifying new issues . . . when weighing the evidence at the close of trial, and disregarding any new issues . . . that exceed[] the proper scope of reply or sur-reply,” and as such, “striking the entirety or a portion of a party’s brief is an exceptional remedy that the Board expects will be granted rarely.” CTPG, 80–81.

Patent Owner, however, is authorized to file in each proceeding a paper titled “Patent Owner’s List of Improper Reply Arguments and Evidence,” which shall be in the form of a numbered, itemized list that provides the paper, page, and line number location only of the portions of Petitioner’s Reply, or the Exhibit Number, that Patent Owner asserts exceed the scope of a proper reply.

² Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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We also authorize Petitioner to file in each proceeding “Petitioner’s Response to Patent Owner’s List of Improper Reply Arguments and Evidence.” If Petitioner chooses to file such a response, Petitioner shall identify, corresponding in the same numbering and itemized manner to Patent Owner’s List, what Petitioner regards as support from the Petition (by paper, page, and line number only), and/or the Patent Owner Response (by paper, page, and line number only) to show that each portion of Petitioner’s Reply or evidence does not exceed the scope of a proper reply. Petitioner’s paper shall not contain any substantive arguments.

The propriety or impropriety of the identified portions of the reply or evidence will be addressed, to the extent necessary, in a later order or in our final written decision for each proceeding. To the extent we determine that any item identified by Patent Owner warrants additional briefing, an additional order will be issued, providing such instruction to the parties.

Accordingly, it is in each of the above identified proceedings:

ORDERED that Patent Owner’s request for leave to file a motion to strike portions of Petitioner’s Reply and related evidence is *denied*;

FURTHER ORDERED that Patent Owner is authorized to file “Patent Owner’s List of Improper Sur-reply Arguments and Evidence,” as described above, by October 1, 2021, and;

FURTHER ORDERED that Petitioner is authorized to file “Petitioner’s Response to Patent Owner’s List of Improper Reply Arguments and Evidence,” as described above, by October 8, 2021.

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