

From: Kiblawi, Fadi N.
To: "sommerera@gtlaw.com"; Park, Peter S.; Rabena, John F.; Mandir, William H.
Cc: afawzy@unifiedpatents.com; roshan@unifiedpatents.com
Subject: RE: IPR2021-00368: Reply to POPR
Attachments: [image001.png](#)

Drew,

Patent Owners oppose Unified's request for a reply on the RPI issue because Unified has no good cause. The burden of persuasion with respect to real parties-in-interest starts and ends with Petitioner, which is why Unified submitted a Declaration as to relevant facts with the Petition. Further, as you know, SharkNinja states that the Board is not required to (as opposed to not permitted to) decide RPI issues at institution. Thus, Patent Owners disagree that Unified "could not have anticipated that Patent Owner would argue that SharkNinja does not apply at the time the petition was filed." Unified is well aware that SharkNinja is not a prohibition, as you appear to have recognized in your email of March 19, 2021 ("...in light of the Board's decision in SharkNinja ... the Board does not always need to consider whether the RPI disclosure is correct at the institution stage").

Thus, Patent Owners oppose Petitioner's request for additional briefing, as there lacks good cause pursuant to 37 C.F.R. § 42.108(c).

In terms of availability for a conference with the Board, we are available March 5-7.

Best,
Fadi

From: sommerera@gtlaw.com <sommerera@gtlaw.com>
Sent: Wednesday, April 28, 2021 6:34 AM
To: Kiblawi, Fadi N. <fkiblawi@sughrue.com>; Park, Peter S. <ppark@sughrue.com>; Rabena, John F. <jrabena@sughrue.com>; Mandir, William H. <wmandir@sughrue.com>
Cc: afawzy@unifiedpatents.com; roshan@unifiedpatents.com
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Fadi,

Unified will seek the Board's authorization to file a reply to Patent Owner's arguments regarding the identification of RPIs. Unified intends to ask for 15 pages and the ability to submit evidence in response to Patent Owner's arguments (which made up about 20 pages of the POPR). Good cause exists because Petitioner could not have anticipated that Patent Owner would include an argument that the Board need not consider at this stage, as set forth by the Board's precedential decision in SharkNinja. Petitioner also could not have anticipated that Patent Owner would argue that SharkNinja does not apply at the time the petition was filed, given the Board's explicit characterization of SharkNinja's holding ("no RPI analysis necessary at institution absent allegation of time bar or estoppel based on unnamed RPI").

Please let us know Patent Owner's position on Unified's request. Additionally, in the email to the Board, we would like to provide our availability for a call should the panel deem it necessary. We would like to provide dates between May 3rd and May 6th, and I can currently be flexible with respect to the timing of the call. Please provide availability for someone on your team that can handle a call with the Board

should one be needed.

Regards,

Drew

Andrew R. Sommer

Shareholder

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