



Ellyar Barazesh <ellyar@unifiedpatents.com>

IPR2021-01413 - Petitioner's requests regarding motion to strike and sur-sur reply

Trials <Trials@uspto.gov>

Thu, Oct 27, 2022 at 10:02 AM

To: Ellyar Barazesh <ellyar@unifiedpatents.com>, Trials <Trials@uspto.gov>, Michelle Aspen <michelle@unifiedpatents.com>, "Hayes, Jennifer" <jenhayes@nixonpeabody.com>, "Werber, Matthew" <mwerber@nixonpeabody.com>, "Dandalides, George" <gdandalides@nixonpeabody.com>

Counsel,

Upon consideration of Petitioner's email request to the Board dated October 17, 2022, the Board finds that good cause exists and grants Petitioner's request for authorization to file a 5 page Sur-sur reply limited to addressing the substance of the issues raised in Patent Owner's sur-reply, Paper 35, at page 7, lines 9-11 and footnote 2, concerning Dr. Bederson's deposition testimony about Exhibits 2041-2045. Petitioner's Sur-sur Reply shall be filed by November 4, 2022.

Thank you,

Eric W. Hawthorne

Supervisory Paralegal Specialist

Patent Trial and Appeal Board

From: Ellyar Barazesh <ellyar@unifiedpatents.com>**Sent:** Monday, October 17, 2022 3:43 PM**To:** Trials <Trials@USPTO.GOV>; Michelle Aspen <michelle@unifiedpatents.com>; Hayes, Jennifer <jenhayes@nixonpeabody.com>; Werber, Matthew <mwerber@nixonpeabody.com>; Dandalides, George <gdandalides@nixonpeabody.com>**Subject:** IPR2021-01413 - Petitioner's requests regarding motion to strike and sur-sur reply

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Dear Honorable Board,

Petitioner Unified Patents, LLC respectfully requests authorization from the Board to file a motion to strike Exhibits 2041-2045 and portions (identified below) of the Patent Owner's sur-reply (Paper 35), filed October 11, 2022 in the above-referenced proceeding. Alternatively, Petitioner respectfully requests authorization to file a 5 page sur-sur reply, without evidence, addressing the substance of the below-noted issues of Patent Owner's sur-reply. Petitioner's requests are timely, within one week of when Patent Owner filed its sur-reply. Trial Practice Guide, 80-81.

<https://mail.google.com/mail/u/0/?ik=b0f3ca455b&view=pt&search=all&permmsgid=msg-f%3A1747853445378616264&dsqt=1&simpl=msg-f%3A1747853445378...> 1/2

UNIFIED PATENTS EXHIBIT 1040

Good cause exists for granting either of Petitioner's requests. First, Exhibits 2041-2045, introduced during the second deposition of Dr. Bederson (Petitioner's expert), were filed by Patent Owner with the sur-reply, contravening 37 C.F.R. 42.23(b). Second, the portions of the sur-reply, identified below, rely on Dr. Bederson's deposition testimony regarding one or more of Exhibits 2041-2045, where he was not familiar with these exhibits and they do not provide context for his testimony:

- Page 7, lines 9-11

- Page 7, footnote 2

Absent striking exhibits 2041-2045 and the above-identified portions of the sur-reply, or having the ability to respond via a sur-sur reply, Petitioner would be prejudiced. Petitioner intends to separately object to Exhibits 2041-2045 and file a motion to exclude these exhibits.

Petitioner and Patent Owner have conferred. Patent Owner does not oppose Petitioner's requests for authorization to file the motion to strike or the sur-sur reply, but has indicated that it will oppose the motion or the sur-sur reply itself.

If the Board feels a conference call is necessary, Petitioner and Patent Owner are available on the following days (all times Eastern):

- Wednesday 10/19: 12:00 PM - 1:00 PM, 4:00 PM - 5:00 PM

- Thursday 10/20: 12:00 PM - 5:00 PM

- Monday 10/24: 1:30 PM - 5:00 PM

- Tuesday 10/25: 12:00 PM - 5:00 PM

- Wednesday 10/26: 12:00 PM - 3:30 PM

Thank you,

Ellyar Y. Barazesh

Counsel for Petitioner Unified Patents, LLC

Ellyar Y. Barazesh

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