

**From:** [Trials](#)  
**To:** [Kushan, Jeffrey P.](#); [Trials](#)  
**Cc:** [Dandalides, George](#); [Girgis, Diana](#); [Werber, Matthew](#); [Christopher, Angelo](#); [Mahoney, Matthew](#); [Reid, Christine](#); [Broughan III, Thomas A.](#)  
**Subject:** RE: IPR2022-00031, -00032, -00033; PGR2002-00006  
**Date:** Thursday, March 2, 2023 8:21:33 AM  
**Attachments:** [image001.png](#)

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Counsel,

From the Board –

Petitioner is authorized to file corrected versions of Petitioner’s Reply briefs in each of IPR2022-00031, IPR2022-00032, IPR2022-00033; and PGR2002-00006. The authorized corrections are limited those not opposed by Patent Owner that necessary to fix incorrect citations to Exhibit 1089.

Regards,

Esther Goldschlager  
Supervisory Paralegal Specialist  
Patent Trial & Appeal Board  
U.S. Patent & Trademark Office  
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**From:** Kushan, Jeffrey P. <jkushan@sidley.com>  
**Sent:** Monday, February 27, 2023 5:17 PM  
**To:** Trials <Trials@USPTO.GOV>  
**Cc:** Dandalides, George <gdandalides@nixonpeabody.com>; Girgis, Diana <dgirgis@nixonpeabody.com>; Werber, Matthew <mwerber@nixonpeabody.com>; Christopher, Angelo <achristopher@nixonpeabody.com>; Mahoney, Matthew <mmahoney@sidley.com>; Reid, Christine <creid@sidley.com>; Broughan III, Thomas A. <tbroughan@sidley.com>  
**Subject:** IPR2022-00031, -00032, -00033; PGR2002-00006

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Your Honors,

Petitioner requests authorization to file corrected versions of Petitioner’s replies in each of the above noted proceedings. Patent Owner does not oppose Petitioner’s request with respect to certain corrections, and Petitioner will limit the corrections to those that are not opposed by Patent Owner. The proposed corrections would fix a number of incorrect citations to Exhibit 1089 in each reply caused by a change to the pagination of EX1089 made by the court reporter that was not identified to Petitioner’s counsel.

The circumstances that led to the errors are as follows. EX1089 consists of the two volumes of the deposition transcript of Patent Owner’s expert, Dr. Surati. Petitioner’s counsel received final versions of volumes 1 and 2 of the transcript on December 5 and 8, respectively, and used these versions of EX1089 to insert and check citations in drafts of the replies. On December 15, it was discovered that the cover page of each volume listed incorrect proceeding numbers, and the court reporter was asked to correct that error. On December 16, the court reporter provided corrected versions of the two volumes, explaining the changes as follows: “The case numbers in the caption have all been corrected and two exhibits were also added to the index and stickered and included here (1068 and 1074).”

Petitioner has determined the error arose because the court reporter also added two pages to the end of volume 1, which caused volume 2 to begin on page 261 instead of page 259. This addition of pages was not identified by the court reporter. Because there was no basis to believe the pagination of the transcript had changed, it appears that a number of the citations to EX1089 in the replies checked before 12/16 were not revised. These unchanged citations reference passages of the transcript that are precisely two pages off relative to their location in the corrected final transcript. The line numbers of these citations are not incorrect, only the page numbers.

Petitioner has met and conferred with Patent Owner regarding this request. Patent Owner indicates it does not oppose correction of some of the incorrect citations, but does oppose correction of others due to potential prejudice those corrections may cause. Petitioner thus is limiting this request to corrections of citations to EX1089 in the replies that Patent Owner does not oppose.

The parties are available for a conference call with the panel if the panel determines one is warranted. Both parties are available on the following dates and times (all times eastern)

- Wednesday, March 1 between 10 am and 1 pm
- Thursday, March 2, between 10 and 11 am, or
- Friday, March 3, between 10 am and 4 pm.

Sincerely,

Jeff Kushan  
**JEFFREY P. KUSHAN**

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