

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Chanel, Inc.,

Petitioner,

v.

Molo Design, Ltd.,

Patent Owner.

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Case IPR2022-00545  
U.S. Patent 9,689,161

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**PETITIONER'S OBJECTIONS TO PATENT OWNER'S EXHIBITS**

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Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner submits the following objections to Exhibits 2034-2037 filed with Patent Owner's Sur-Reply. Petitioner's objections are timely, being filed within 5 business days of service of Exhibits 2034-2037.

Petitioner objects to Exhibits 2034-2037 as untimely and filed in violation of 37 C.F.R. § 42.23(b) and the Consolidated Trial Practice Guide. Exhibits 2034-2037 purport to be emails sent or received by Patent Owner in April 2017. Patent Owner relies on these exhibits as evidence of copying. *See* Paper 32 at 30-31. Patent Owner could have filed these exhibits with its Response, in which it first raised the issue of alleged copying (*see* Paper 19 at 69-71), or with its earlier Preliminary Response (Paper 8). Instead, Patent Owner withheld this new evidence until its Sur-Reply, depriving Petitioner the opportunity to obtain related discovery and to respond in its briefing.<sup>1</sup>

Patent Owner's belated submission of Exhibits 2034-2037 violates 37 C.F.R. § 42.23(b) and the Consolidated Trial Practice Guide because these exhibits

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<sup>1</sup> Patent Owner's untimely submission is especially prejudicial because Patent Owner failed to include a closely related email in its possession that undercuts the copying argument made in its Sur-Reply.

constitute new evidence and are not deposition transcripts of the cross-examination of any reply witness. *See* 37 C.F.R. § 42.23(b) (“A sur-reply . . . may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.”); PTAB Consolidated Trial Practice Guide, November 2019 at 73 (“The sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.”); *Satco Products, Inc. v. Seoul Semiconductor Co., LTD.*, IPR2020-00836, Paper 45 at 75-77 (PTAB Oct. 22, 2021) (striking exhibits filed with patent owner’s sur-reply because they constituted new evidence other than deposition transcripts of the cross-examination of any reply witness); *Lenovo Holding Co., Inc. v. Dodots Licensing Solutions LLC*, IPR2019-01278, Paper 37 at 31-33 (PTAB Jan. 19, 2021) (same).

Petitioner further objects to Exhibits 2034-2037 as constituting impermissible hearsay to which no exception applies because Patent Owner relies on its own statements in these documents to prove the truth of those statements. *See* Fed. R. Evid. 801-802.

Petitioner further objects to Exhibits 2034-2037 as not properly authenticated under Fed. R. Evid. 901 because Patent Owner has offered no evidence showing that these documents are authentic or that they are self-

authenticating under Fed. R. Evid. 902.

Petitioner requests that Patent Owner immediately withdraw Exhibits 2034-2037.

Dated: April 17, 2023

Respectfully submitted,

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IPR2022-00545  
U.S. Patent 9,689,161  
Petitioner's Objections to Patent Owner's Exhibits

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