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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Chanel, Inc.,

Petitioner,

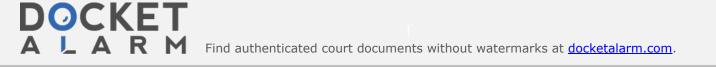
v.

Molo Design, Ltd.,

Patent Owner.

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

PETITIONER'S OBJECTIONS TO PATENT OWNER'S EXHIBITS



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.¹

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

¹ 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 crossexamination 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 surreply 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 selfauthenticating under Fed. R. Evid. 902.

Petitioner requests that Patent Owner immediately withdraw Exhibits 2034-

2037.

DOCKE.

Dated: April 17, 2023

Respectfully submitted,

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