
From: Trials <Trials@USPTO.GOV>

Sent: Wednesday, April 19, 2023 2:29 PM

To: Chibib, Michael <michael.chibib@bracewell.com>; Trials <Trials@USPTO.GOV>;
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Schuettenhelm, Jared <jared.schuettenhelm@bracewell.com>; Connolly, Patrick
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<brian.tompkins@bracewell.com>

Subject: RE: Cases IPR2022-00543, -00544, -00545, -00546 Request Authorization to File Motion to
Strike

Counsel,

From the Board-

Based on the parties' statements below, we grant Petitioner's unopposed request for authorization to file a motion to strike. The motion shall not exceed three pages in length and shall be filed no later than April 24th. Patent Owner may file an opposition to the motion that shall not exceed three pages in length and shall be filed no later than April 28th. No reply is authorized at this time.

Regards,

Esther Goldschlager
Supervisory Paralegal Specialist
Patent Trial & Appeal Board
U.S. Patent & Trademark Office

From: Chibib, Michael <michael.chibib@bracewell.com>

Sent: Wednesday, April 19, 2023 9:01 AM

To: Trials <Trials@USPTO.GOV>; cornelio.gina@dorsey.com

Cc: godfrey.geoff@dorsey.com; bjorklund.shannon@dorsey.com; miller.mark@dorsey.com;
Schuettenhelm, Jared <jared.schuettenhelm@bracewell.com>; Connolly, Patrick
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Subject: RE: Cases IPR2022-00543, -00544, -00545, -00546 Request Authorization to File Motion to Strike

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Dear Honorable Board –

Patent Owner appreciates the Board’s request for the basis of filing new evidence (Exs. 2034-2037) in Patent Owner’s sur-reply (Paper 30). Patent Owner appreciates the import of 37 CFR § 42.23(b), but also understands that the Board has “broad discretion to regulate the presentation of evidence.” *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1078 (Fed. Cir. 2015). It is this discretion that Patent Owner seeks to invoke to correct the record regarding copying, specifically whether Chanel purchased a Molo softwall + softblock product prior to purchasing a competing product. There is no prejudice to Chanel because the new evidence consists of emails to which Chanel was a party. Chanel knew or should have known of their existence.

In its Reply, Chanel claimed that there was no evidence of this purchase. Paper 28, p. 10. The new evidence simply corrects the record by providing the correspondence between Chanel and Molo leading up to the purchase of the Molo softwall + softblock product in 2017—before Chanel purchased the competing product.

Because Exs. 2034-2037 are new evidence, Patent Owner does not oppose Petitioner’s request to address the issue via a motion to strike.

Best regards,

Mike Chibib

MICHAEL CHIBIB

Partner

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From: Trials <Trials@USPTO.GOV>

Sent: Tuesday, April 18, 2023 10:58 AM

To: cornelio.gina@dorsey.com; Trials <Trials@USPTO.GOV>

Cc: godfrey.geoff@dorsey.com; bjorklund.shannon@dorsey.com; miller.mark@dorsey.com; Schuettenhelm, Jared <jared.schuettenhelm@bracewell.com>; Chibib, Michael <michael.chibib@bracewell.com>; Connolly, Patrick <patrick.connolly@bracewell.com>; Shargel, David <david.shargel@bracewell.com>; Civins, Conor <conor.civins@bracewell.com>
Subject: RE: Cases IPR2022-00543, -00544, -00545, -00546 Request Authorization to File Motion to Strike

Counsel,

From the Board-

Before addressing Petitioner's request for authorization to file a motion to strike, we would like to hear from Patent Owner as to the basis for filing the exhibits with its Sur-reply and how such a filing comports with our rules. Patent Owner should also indicate whether it opposes Petitioner's request to address the issue via a motion to strike. Patent Owner should provide such a response no later than 12 p.m. ET tomorrow, April 19th.

Regards,

Esther Goldschlager
Supervisory Paralegal Specialist
Patent Trial & Appeal Board
U.S. Patent & Trademark Office

From: cornelio.gina@dorsey.com <cornelio.gina@dorsey.com>
Sent: Monday, April 17, 2023 6:12 PM
To: Trials <Trials@USPTO.GOV>
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Subject: Cases IPR2022-00543, -00544, -00545, -00546 Request Authorization to File Motion to Strike

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Dear Honorable Board,

Petitioner respectfully requests authorization to file a motion to strike Exhibits 2034-2037 filed with Patent Owner's Sur-Reply in each of the above-referenced proceedings. Petitioner timely filed objections to these exhibits and in those objections requested that Patent Owner withdraw Exhibits 2034-2037. *See, e.g.*, IPR2022-000543, Paper 31.

Petitioner contends that Exhibits 2034-2037 were filed in violation of 37 C.F.R. § 42.23(b) and the Consolidated Trial Practice Guide because these exhibits constitute new evidence and are not

deposition transcripts of the cross-examination of any reply witness. See 37 C.F.R. § 42.23(b); PTAB Consolidated Trial Practice Guide, November 2019 at 73; *Satco Products, Inc. v. Seoul Semiconductor Co., LTD.*, IPR2020-00836, Paper 45 at 75-77 (PTAB Oct. 22, 2021); *Lenovo Holding Co., Inc. v. Dodots Licensing Solutions LLC*, IPR2019-01278, Paper 37 at 31-33 (PTAB Jan. 19, 2021). 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. Patent Owner could have filed these exhibits with its Response, in which it first raised the issue of alleged copying, or with its earlier Preliminary Response. 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.

Sincerely,
Gina Cornelio
Counsel for Petitioner

Gina N. Cornelio

Partner

Patent Group Co-Head



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