

Paper No. _____
Filed: April 20, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE UNITED STATES POSTAL SERVICE (USPS)
AND THE UNITED STATES OF AMERICA,
AS REPRESENTED BY THE POSTMASTER GENERAL,

Petitioner,

v.

RETURN MAIL, INC.,

Patent Owner.

Case: CBM2014-00116

Patent: 6,826,548

Petitioner's Opposition to RMI's Motion to Exclude

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I. Relief Requested

Pursuant to 37 C.F.R. 42.64, Petitioner opposes RMI's Motion to Exclude (Paper No. 25, "Motion"). First, although the Board has previously recognized a motion to exclude is not an appropriate vehicle for challenging a reply, or a reply's supporting evidence, as exceeding the scope of a proper reply, *Liberty Mutual Ins. Co. v. Progressive Casualty Ins. Co.*, Case CBM2012-0002, slip op. at 62 (PTAB Jan. 23, 2014) (Paper 66), RMI's Motion, nonetheless, attempts to challenge USPS's Reply (Paper 22), and USPS's expert supplemental declaration (Ex. 1028). Moreover, in an attempt to circumvent the page limit requirements for its Response, RMI improperly adds additional arguments to its Motion, which should have been in its Response. Lastly, RMI does not satisfy its burden of proof that it is entitled to the relief requested. Therefore, USPS respectfully requests the Board deny RMI's Motion in its entirety.

II. RMI's Motion to Exclude Should Be Denied

A. Exhibits 1003, 1005, 1006, 1007, 1013, and 1014

RMI's request to exclude Exhibits 1003, 1005, 1006, 1007, 1013, and 1014 should be denied as moot. The identified exhibits relate to the denied instituted grounds for "administrative necessity to ensure timely completion of the instituted proceeding." Institution Decision (Paper No. 11, "ID") at 33. Therefore, the identified exhibits are moot and RMI's request should be denied.

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