

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAMELBAK PRODUCTS, LLC,
Petitioner,

v.

IGNITE USA, LLC,
Patent Owner.

Case IPR2015-01034
Patent 8,863,979 B2

Before SALLY C. MEDLEY, KEN B. BARRETT, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

WIEKER, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On March 8, 2016, Patent Owner sent an electronic mail message to the Board requesting authorization to file a ten page surreply to Petitioner's reply (Paper 22), along with ten pages of supporting declaration testimony. Patent Owner stated that the surreply would "address new arguments and evidence" raised in Petitioner's reply. Petitioner opposed the request.

Patent Owner's request is denied. In its request, Patent Owner did not specifically argue that Petitioner's reply exceeds the proper scope of a reply. Nonetheless, this appears to be Patent Owner's contention. Whether a reply contains arguments or evidence that is outside the scope of a proper reply under 37 C.F.R. § 42.23(b) is left to the determination of the Board. The Board will determine whether Petitioner's reply and evidence are outside the scope of a proper reply and evidence when the Board reviews all of the parties' briefs and prepares the final written decision. If there are improper arguments and evidence presented with a reply, the Board may exclude the reply and related evidence.

Patent Owner is permitted to cross-examine reply declarants and, if necessary, Patent Owner may file a motion for observation regarding cross-examination of a reply witness by DUE DATE 4. As noted in the Scheduling Order (Paper 16), a motion for observation on cross-examination is a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness. The observation must be a concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit (including another part of the same testimony). An observation is not an opportunity to raise new issues, to re-argue issues, or to pursue objections.

Each observation should be in the following form:

In exhibit ____, on page ____, lines ____, the witness testified ____.
That testimony is relevant to the ____ [stated or argued] on
page ____, lines ____ of _____. The testimony is relevant because
_____.

Each observation should not exceed one short paragraph. The Board may decline consideration or entry of argumentative observations. In accordance with the Scheduling Order, Petitioner may file a response to any motion for observation by DUE DATE 5.

It is:

ORDERED that Patent Owner's request to file a surreply is denied;

FURTHER ORDERED that Patent Owner is authorized to file a motion for observation on cross-examination by DUE DATE 4 consistent with this Order;

FURTHER ORDERED that Petitioner is authorized to file a response to any motion for observation by DUE DATE 5 consistent with this Order.

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