IPR2017-00693
Patent Owner Preliminary Response

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALBAAD MASSUOT YITZHAK, LTD. AND ALBAAD USA, INC., Petitioner,

V.

EDGEWELL PERSONAL CARE BRANDS, LLC, Patent Owner.

Case IPR2017-00693 Patent 9,192,522 B2

PATENT OWNER PRELIMINARY RESPONSE PURSUANT TO 37 C.F.R. § 42.107(a)



Paper No.	
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### **TABLE OF AUTHORITIES**

FEDERAL CASES	Page(s)
FEDERAL CASES	
Avaya Inc., Dell Inc., Sony Corporation of America, and Hewlett-Packard Co. v. Network-1 Security Solutions Inc.,	
IPR2013-00071, Paper 103 (PTAB May 22, 2014)	10
Cutsforth, Inc. v. Motivepower, Inc. 636 Fed. Appx. 575 (Fed. Cir. 2016)	18
Ex parte Levy, 17 U.S.P.Q.2d 1461 (Bd. Pat. App. & Inter. 1990)	10
Front Row Technologies, LLC v. MLB Advanced Media, L.P., IPR2015-01932, Paper 7 (PTAB Mar. 25, 2016)	28
Hockerson-Halberstadt, Inc. v. Avia Group Int'l, 222 F.3d 951 (Fed. Cir. 2000)	14
<i>In re Chitayat</i> , 408 F.2d 475 (CCPA 1969)	14
In re Gordon, 733 F.2d 900 (Fed. Cir. 1984)	34
In re Magnum Oil Tools Int'l, Ltd., 829 F.3d 1364 (Fed. Cir. 2016)	37
In re Rijckaert, 9 F.3d 1531 (Fed. Cir. 1993)	10
In re Wright, 569 F.2d 1124 (CCPA 1977)	14
Jackel Int'l Ltd. v. Admar Int'l, Inc., IPR2015-00979, Paper 7 (PTAB Oct. 1, 2015)	33
Kartri Sales Co., Inc. v. Zahner Design Group, Ltd., IPR2016-01327, Paper 10 (PTAB Jan. 3, 2017)	18



KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398 (2007)	36
Nautilus Hyosung Inc. v. Diebold, Inc., IPR2016-00633, Paper 9 (PTAB Aug. 22, 2016)	3, 37
Nystrom v. TREX Co, Inc., 424 F.3d 1136 (Fed. Cir. 2005)	4, 22
Securus Technologies, Inc. v. Global Tel*Link Corp., IPR2016-00267, Paper 8 (PTAB Jun. 3, 2016)	33
Spectrum Brands, Inc. v. Assa Abloy AB, IPR2015-01563, Paper 7 (PTAB Jan. 15, 2016)	28
Zepp Labs, Inc. v. Blast Motion, Inc., IPR2016-00672, Paper 8 (PTAB Aug. 29, 2016)	18
ZTE Corp. v. ContentGuard Holdings, Inc., IPR2013-00137, Paper 58 (PTAB Jul. 1, 2014)	10
REGULATIONS	
Manual of Patent Examining Procedure ("MPEP"), Ninth Ed., Rev. 07.2015, Last Rev. Nov. 2015, § 2112 (IV), p. 2100-50	10
MPEP § 2125 (II), p. 2100-66	14
MPEP § 2143.01(V), p. 2100-164	34
MPEP § 2144, p. 2100-167	18
MPEP § 2145(X)(2), p. 2100-196	33
MPEP § 2141(III), p. 2100-1323	6, 37

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