

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELPHI TECHNOLOGIES, INC.,
Petitioner,

v.

MICROCHIP TECHNOLOGY INC.,
Patent Owner.

Case IPR2017-00861 (Patent 7,627,708 B2)
Case IPR2017-00864 (Patent 7,523,243 B2)¹

Before BRIAN J. McNAMARA, DANIEL N. FISHMAN, and
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

FISHMAN, *Administrative Patent Judge*

ORDER

Authorizing Patent Owner's Motion to Exclude
37 C.F.R. §§ 42.5, 42.20–22, 42.64

¹ This order addresses issues that are the same in both identified cases. We exercise our discretion to issue one order to be filed in each case. The parties are not authorized to use this style heading in subsequent papers.

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I. INTRODUCTION

On June 21, 2018, the Board received an email from the parties wherein Patent Owner seeks authorization to file a Motion to Exclude Evidence based on objections (Paper 50 (filed June 8, 2018)) it filed responsive to Petitioner's new evidence (Exs. 1053, 1054 (filed June 1, 2018)). Patent Owner notes that the new evidence it objected to was filed after DUE DATES 4–6 as they relate to motions to exclude and related briefs. In the email message, Petitioner expresses its opposition to Patent Owner's request contending further briefing is not necessary and could lead to further problems if the briefing is improper.

II. DISCUSSION

Our Order (Paper 40 "SAS Order") mailed May 10, 2018 authorized the parties to file additional briefs regarding the claims added into the trial responsive to the recent Supreme Court decision in *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348 (2018). In accordance with our SAS Order, the authorized additional briefing culminated with Petitioner filing a Sur-Reply (Paper 46) accompanied by new evidence (Exs. 1053 and 1054) responsive to Patent Owner's arguments in a Supplemental Response (Paper 45).

In accordance with our rules, Patent Owner timely filed objections to the new evidence and now requests authorization to file a Motion to Exclude Evidence to preserve those objections. *See* 37 C.F.R. § 42.64. As noted by Patent Owner, the deadline for filing a Motion to Exclude Evidence, as set by our Scheduling Order, has passed and our SAS Order authorizing Petitioner's filing of new evidence does not address the timing for new objections and associated motions to exclude. Accordingly, pursuant to

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rules 37 C.F.R. §§ 42.5, 42.20–22, and 42.64, we now authorize Patent Owner to file a Motion to Exclude Evidence, no longer than three pages and no later than June 29, 2018. Patent Owner’s Motion to Exclude Evidence shall be limited to issues raised in its objections filed June 8, 2018 (Paper 50). We further authorize Petitioner to file an Opposition to Patent Owner’s Motion to Exclude Evidence, no longer than three pages and no later than July 6, 2018. Still further, if Petitioner files an Opposition to Patent Owner’s Motion to Exclude Evidence, we authorize Patent Owner to file a Reply to Petitioner’s Opposition, no longer than three pages and no later than July 13, 2018.

We remind the parties that a Motion to Exclude Evidence should be directed to admissibility of evidence rather than the weight to be accorded any evidence. The Board will determine the weight to be accorded admissible evidence of record.

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III. ORDER

In view of the foregoing discussion, it is hereby:

ORDERED that Patent Owner is authorized to file a Motion to Exclude Evidence (“Motion”) by June 29, 2018, not to exceed three pages, limited to addressing issues raised in its objections filed June 8, 2018;

FURTHER ORDERED that Petitioner is authorized to file an Opposition to Patent Owner’s Motion (“Opposition”) by July 6, 2018, not to exceed three pages, limited to addressing issues raised by Patent Owner’s Motion; and

FURTHER ORDERED that, if Petitioner files an Opposition, Patent Owner is authorized to file a Reply to Petitioner’s Opposition by July 13, 2018, not to exceed three pages, limited to rebutting issues raised in Petitioner’s Opposition.

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