

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FANDUEL, INC.
DRAKINGS, INC.
BWIN.PARTY DIGITAL ENTERTAINMENT PLC,
Petitioners,

v.

CG TECHNOLOGY DEVELOPMENT, LLC,
Patent Owner.

Case IPR2017-00902
Patent RE39,818

WEATHERLY, *Administrative Patent Judge.*

ORDER

*Authorizing Patent Owner to File a List of Reply Arguments
It Considers Improper*

Authorizing Petitioner to File a Response

37 C.F.R. § 42.5

On June 5, 2018, the parties contacted the Board in a series of three e-mails in which they seek authorization to file papers relating to the issue of whether Petitioner raised new arguments for the first time in its Reply (Paper 25). After conferring, the parties jointly proposed that they follow a process similar to that used by the Board in CBM2016-00009 and IPR2017-00114. More specifically, the parties propose that:

(1) Patent Owner will file a listing identifying the portions of the Petitioner's Reply that it believes raise arguments for the first time. The listing would only identify those portions by page and line number of the Petitioner's Reply. No other arguments or other substantive comments would be included. The listing would be filed by June 11.

(2) In response to Patent Owner's listing, Petitioner will file a response explaining briefly how the argument responds to arguments raised by the Patent Owner in the Patent Owner's Response. The response would be filed by June 25.

Patent Owner may file a numbered list of citations to pages and line numbers in Petitioner's Reply (Paper 25) that Patent Owner contends exceed the proper scope of a reply under 37 C.F.R. § 42.23(b). Patent Owner shall file its list as a paper entitled "Patent Owner's List of Improper Reply Arguments."

Petitioner may file a response citing the location in the Patent Owner Response to which each identified portion of the Reply responds along with a brief, non-argumentative explanation of how the Reply material responds to Patent Owner's argument and/or where the argument in the Reply was raised in the Petition (Paper 1).

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ORDER

In view of the foregoing, it is hereby:

ORDERED that Patent Owner is authorized to file a List of Improper Reply Arguments as described above by no later than June 11, 2018;

FURTHER ORDERED that Petitioner is authorized to file a Response, as described above by no later than June 25, 2018.

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