

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ELITE PERFORMANCE FOOTWEAR, LLC,  
Petitioner,

v.

REEBOK INTERNATIONAL LIMITED,  
Patent Owner.

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IPR2017-01676 (Patent 7,637,035 B1)  
IPR2017-01680 (Patent 8,505,221 B2)  
IPR2017-01689 (Patent 8,020,320 B2)

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Before MEREDITH C. PETRAVICK, KEVIN W. CHERRY, and  
JAMES A. WORTH, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

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

IPR2017-01676 (Patent 7,637,035 B1)  
IPR2017-01680 (Patent 8,505,221 B2)  
IPR2017-01689 (Patent 8,020,320 B2)

Counsel for Petitioner contacted the Board via email on October 1, 2018 to request authorization to file a sur-reply to Patent Owner's Reply in Support of its Contingent Motion to Amend in each of these proceedings. The email stated: "Petitioner respectfully requests the opportunity to file a sur-reply to Patent Owner's Reply in Support of its Contingent Motion to Amend filed September 25, 2018, in each of these proceedings (IPR2017-01676; -01680; -01689). If allowed, Petitioner will file the sur-replies by October 9, 2018 (DUE DATE 4)." The email indicated that Patent Owner does not oppose the request.

The August 2018 Update to the Trial Practice Guide<sup>1</sup> ("Trial Practice Guide Update") provides that "[s]ur-replies to principal briefs (i.e., to a reply to a patent owner response or to a reply to an opposition to a motion to amend) normally will be authorized by the scheduling order entered at institution." Trial Practice Guide Update, 14. The Trial Practice Guide Update states, "sur-reply practice essentially replaces the previous practice of filing observations on cross-examination testimony." *Id.*

Petitioner's request is granted. In each proceeding, the sur-reply must comply with all of the requirements for a sur-reply set forth in the Trial Practice Guide Update. *See* Trial Practice Guide Update, 6, 14–15. The sur-reply is limited to 12 pages. *Id.* at 6. "The sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness. Sur-replies should only respond to

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<sup>1</sup> Available at [https://www.uspto.gov/sites/default/files/documents/2018\\_Revised\\_Trial\\_Practice\\_Guide.pdf](https://www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf)

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arguments made in reply briefs, comment on reply declaration testimony, or point to cross-examination testimony.” *Id.* at 14.

It is:

ORDERED that Petitioner is authorized to file, in each of these proceedings, a sur-reply to Patent Owner’s Reply in Support of its Contingent Motion to Amend; and

FURTHER ORDERED that the sur-replies must comply with the requirements for sur-replies set forth in the Trial Practice Guide Update and must be filed no later than October 9, 2018.

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