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Paper: 24
Entered: September 10, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ELITE PERFORMANCE FOOTWEAR, LLC,
Petitioner,

v.

REEBOK INTERNATIONAL LIMITED,
Patent Owner.

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

Before MEREDITH C. PETRAVICK and KEVIN W. CHERRY,
Administrative Patent Judges.

PETRAVICK, *Administrative Patent Judge.*

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

Counsel for the parties and Judges Petravick, Cherry, and Worth held a conference call on September 6, 2018. The purpose of the call was to discuss Patent Owner's request to file a sur-reply to Petitioner's Reply in Support of its Petition in each of these proceedings.

The August 2018 Update to the Trial Practice Guide[1] ("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.*

During the call, we granted Patent Owner's request. The sur-reply must comply with all of the requirements for a sur-reply set forth in the Trial Practice Guide Update. *See id.* at 6, 14–15. In particular, the sur-reply is limited to 5,600 words. *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." *Id.* at 14. "Sur-replies should only respond to arguments made in reply briefs, comment on reply declaration testimony, or point to cross-examination testimony." *Id.* Patent Owner agreed that the filing of the sur-reply would be lieu of filing motion for observations. *See* Paper 24[2], 2. On September 7, 2018, the parties filed a Joint Stipulation to

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[1] Available at https://www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf

[2] IPR2017-01676 is representative and all citations are to IPR2017-01676.

Adjust the Scheduling Order allowing for the filing of a sur-reply by September 25, 2018. Paper 24, Appx.

It is:

ORDERED that Patent Owner is authorized to file, in each of these proceedings, a sur-reply to Petitioner's Reply in Support of its Petition;

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 September 25, 2018; and

FURTHER ORDER that motions for observations are no longer authorized in these proceedings.

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