

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PROPPANT EXPRESS INVESTMENTS, LLC,
PROPPANT EXPRESS SOLUTIONS, LLC,
Petitioner,

v.

OREN TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2017-01917 (Patent 9,296,518)
Case IPR2017-01918 (Patent 9,403,626)
Case IPR2017-02103 (Patent 9,403,626)¹

Before MITCHELL G. WEATHERLY, KEVIN W. CHERRY, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

WOODS, *Administrative Patent Judge*.

ORDER
Denying Motion to Strike
37 C.F.R. § 42.5

¹ We issue one Order and enter it in each proceeding.

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IPR2017-02103 (Patent 9,403,626)

I. INTRODUCTION

With our authorization (Paper 68), Petitioner filed a Motion to Strike (Paper 71, “Motion”) in each proceeding.² Patent Owner filed an Opposition (Paper 73, “Opposition”) to Petitioner’s Motion.

We deny Petitioner’s Motion in each proceeding.

II. ANALYSIS

The issue is whether we should *strike* certain statements made by Patent Owner in its Sur-Reply (Paper 66). As the moving party, Petitioner bears the burden of proof to establish that it is entitled to the requested relief. 37 C.F.R. § 42.22(c).

The Board’s updated Trial Practice Guide provides that motions to strike may be filed “[i]f a party believes that a brief filed by the opposing party raises new issues, is accompanied by belatedly presented evidence, or otherwise exceeds the proper scope of reply or sur-reply.” *See* TRIAL PRACTICE GUIDE UPDATE, 83 Fed. Reg. 38,989, 17 (Aug. 13, 2018) (“Practice Guide”). The Practice Guide further provides that a “striking the entirety or a portion of a party’s brief is an *exceptional remedy* that the Board expects will be granted rarely.” *Id.* at 17–18 (emphasis added).

Petitioner moves to strike from Patent Owner’s Sur-Reply allegedly false and misleading statements. Motion 1. In particular, Petitioner seeks to strike statements that Petitioner asserts misrepresents Patent Owner’s revenue evidence to support Patent Owner’s commercial success arguments.

² Unless otherwise indicated, our citations will be to the record of IPR2017-01917.

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See id. at 4 (“[Patent Owner’s] Relied-on Revenue cannot be for just containers and conveyors, as the Cummings, Carusona, and Salters evidence show”); *see also id.* at 5 (“The Board should exercise its authority under Rule 5(a) to strike the statement identified above. This is appropriate given the false or misleading nature of the statements [and] the improper harm they would otherwise cause Petitioners given the alleged significance of PO’s alleged commercial success.”).

Patent Owner opposes Petitioner’s Motion, disputing Petitioner’s assertion that the statements are false or misleading. *See* Opposition 1 (“The portions of Patent Owner’s sur-reply that Petitioners seek to strike are not false or misleading.”). Patent Owner argues that Petitioner’s assertion is based on its own incorrect, subjective interpretation. *See id.* at 2 (“Petitioners’ contention that the statements are false or misleading is based exclusively on Petitioners’ subjective, incorrect interpretation.”). Patent Owner argues that Petitioner’s Motion is merely an attempt to submit additional briefing into these proceedings. *Id.* at 2.

We agree with Patent Owner and Petitioner has failed to persuade us that it is entitled to the requested relief. 37 C.F.R. § 42.22(c). Specifically, we are not persuaded that Patent Owner makes false or misleading statements in its Sur-Reply. Rather, the identified statements are simply Patent Owner’s characterization of the evidence to best advance its commercial success argument, and Petitioner’s differing interpretation of that evidence does not provide a basis for granting the *exceptional remedy* of striking Patent Owner’s arguments from the record.

For the foregoing reasons, we deny Petitioner’s Motion in its entirety.

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III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's Motion to Strike (Paper 71 in IPR2017-01917; Paper 67 in IPR2017-01918; and Paper 72 in IPR2017-02103) is denied.

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