

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FASTENERS FOR RETAIL, INC.,
Petitioner,

v.

RTC INDUSTRIES, INC.,
Patent Owner.

Case IPR2018-00741 (Patent 9,173,505)
Case IPR2018-00742 (Patent 9,149,132)
Case IPR2018-00743 (Patent 9,504,321)
Case IPR2018-00744 (Patent 9,635,957)¹

Before PATRICK R. SCANLON and MICHAEL L. WOODS,
Administrative Patent Judges.

WOODS, *Administrative Patent Judge.*

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

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

IPR2018-00741 (Patent 9,173,505)
IPR2018-00742 (Patent 9,149,132)
IPR2018-00743 (Patent 9,504,321)
IPR2018-00744 (Patent 9,635,957)

In its preliminary responses, RTC Industries, Inc. (“Patent Owner”) argued that Fasteners for Retail, Inc. (“Petitioner”) failed to name all real parties-in-interest (“RPI”), namely, Olympus Partners LP (“Olympus”). Paper 11, 28 (IPR2018-00741); Paper 11, 8 (IPR2018-00742); Paper 9, 32 (IPR2018-00743); Paper 11, 7 (IPR2018-00744). With our permission, Petitioner filed a reply (Papers 15, 16 (collectively “Reply”)) and declaration (Ex. 1039) to address the RPI issue.² In an e-mail to the Board dated July 31, Patent Owner requested permission to file a sur-reply (“Sur-Reply”) in response to Petitioner’s Reply, including leave to cross examine Petitioner’s declarant in support of its Sur-Reply and before our decision on whether to institute trial.

A conference call was held between counsel for the parties and the Board on August 2, 2018, to discuss Patent Owner’s request.

The Board’s statutory deadlines for instituting trial in these proceedings are fast approaching. For this reason, we deny Patent Owner’s request for *expedited* cross examination of Petitioner’s declarant.

We grant, however, Patent Owner’s request to file a Sur-Reply in response to Petitioner’s Reply and to address the Federal Circuit’s recent decision in *Applications in Internet Time, LLC, v. RPX Corp.*, (Nos. 2017-1698, 2017-1699, 2017-1701), 2018 WL 3625165 (Fed. Cir. July 9, 2018) (“RPX”). In the interests of fairness, we also grant Petitioner permission to file a sur-sur-reply in response to Patent Owner’s Sur-Reply to respond to Patent Owner’s RPX arguments, only.

² Our citations will be to IPR2018-00741, unless indicated otherwise.

IPR2018-00741 (Patent 9,173,505)
IPR2018-00742 (Patent 9,149,132)
IPR2018-00743 (Patent 9,504,321)
IPR2018-00744 (Patent 9,635,957)

For the reasons given, it is hereby:

ORDERED that Patent Owner is authorized to file a 5-page sur-reply to address *RPX* and respond to Petitioner's RPI arguments in each of IPR2018-00741, IPR2018-00742, IPR2018-00743, and IPR2018-00744, if such sur-replies are filed on or before August 8, 2018;

FURTHER ORDERED that Petitioner is authorized to file a 5-page sur-sur-reply in each of IPR2018-00741, IPR2018-00742, IPR2018-00743, and IPR2018-00744 in response to Patent Owner's sur-replies to address Patent Owner's *RPX* arguments if such sur-sur-replies are filed on or before August 13, 2018; and

FURTHER ORDERED that Patent Owner's request for *expedited* cross examination of Petitioner's declarant is denied.

IPR2018-00741 (Patent 9,173,505)
IPR2018-00742 (Patent 9,149,132)
IPR2018-00743 (Patent 9,504,321)
IPR2018-00744 (Patent 9,635,957)

PETITIONER:

Douglas H. Siegel
William B. Berndt
Ron N. Sklar
Honigman Miller Schwartz & Cohn LLP
dsiegel@honigman.com
wberndt@honigman.com
rsklar@honigman.com

PATENT OWNER:

Joseph J. Berghammer
Scott A. Burow
Bradley J. Van Pelt
Kevin C. Keenan
Eric A. Zelepugas
Banner & Witcoff, Ltd.
RTC-IPR@bannerwitcoff.com
jberghammer@bannerwitcoff.com
sburow@bannerwitcoff.com
bvanpelt@bannerwitcoff.com
kkeenan@bannerwitcoff.com
ezelepugas@bannerwitcoff.com