

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EXOCAD GMBH AND EXOCAD AMERICA, INC.,
Petitioner,

v.

3SHAPE A/S,
Patent Owner.

Case IPR2018-00788
Patent 9,336,336 B2

Before SALLY C. MEDLEY, IRVIN E. BRANCH, and
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

BRANCH, *Administrative Patent Judge*.

ORDER

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

On April 18, 2019, the Board received an email message from Patent Owner's counsel requesting a conference call and an authorization to file a motion to strike portions of Petitioners' Reply and of Exhibit 1023, Second Declaration of Joseph L. Mundy, Ph.D. A telephone conference to discuss Patent Owner's request was held on April 23, 2019, among counsel for Patent Owner, counsel for Petitioner, and Judges Branch, Ippolito, and Medley.

On the call, Patent Owner asserted that Petitioner's Reply to Patent Owner's Response contains new theories or arguments that were not presented in the Petition, and thus are improperly raised for the first time in Petitioners' Reply. Patent Owner sought authorization to file a Motion to Strike sections IV.D.3. and IV.A.1. of Petitioners' Reply and sections VI.C. and III.A. of Exhibit 1023.

Petitioner opposed the request.

After consideration of the parties' arguments, we granted Patent Owner's request to file a motion to strike and authorized Petitioner to file an opposition to Patent Owner's motion. Patent Owner's motion and Petitioner's opposition shall be limited to seven (7) pages each. Patent Owner's motion shall be filed no later than May 7, 2019, and Petitioner's opposition shall be filed no later than May 21, 2019.

ORDER

Accordingly, it is

ORDERED that Patent Owner's request for authorization to file a motion to strike is *granted*;

Case IPR2018-00788
Patent 9,336,336 B2

FURTHER ORDERED that Patent Owner shall file its motion, limited to seven (7) pages, no later than May 7, 2019;

FURTHER ORDERED that Petitioner shall file its opposition, limited to seven (7) pages, no later than May 21, 2018; and

FURTHER ORDERED that no reply by Patent Owner is authorized at this time.

Case IPR2018-00788
Patent 9,336,336 B2

PETITIONER:

Matthew B. Lowrie
Christopher J. McKenne
FOLEY & LARDNER LLP
mlowrie@foley.com
cmckenna@foley.com

PATENT OWNER:

Todd R. Walters
Roger H. Lee
BUCHANAN INGERSOLL & ROONEY PC
todd.walters@bipc.com
roger.lee@bipc.com