

UNITED STATES PATENT AND TRADEMARK OFFICE  
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BEFORE THE PATENT TRIAL AND APPEAL BOARD  
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MALLINCKRODT PHARMACEUTICALS IRELAND LIMITED,  
Petitioner,

v.

BIOVIE, INC.,  
Patent Owner.

\_\_\_\_\_  
Case IPR2018-00974  
Patent 9,655,945 B2  
\_\_\_\_\_

Before MICHELLE N. ANKENBRAND, *Acting Vice Chief Administrative Patent Judge*, ERICA A. FRANKLIN, and KRISTI L. R. SAWERT, *Administrative Patent Judges*.

SAWERT, *Administrative Patent Judge*.

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

On July 12, 2019, Petitioner sent an email to the Board requesting authorization to file a Motion to Strike Exhibit 2044 and the portions of Patent Owner's Sur-Reply that cite to, or rely on, Exhibit 2044, from the record in this proceeding. Ex. 3001. In its email, Petitioner contends that Exhibit 2044 is a newly submitted supplemental declaration filed in support of Patent Owner's Sur-Reply that is contrary to the Board's instructions in the August 2018 Update to the PTAB Trial Practice Guide. *Id.* According to the email, Patent Owner opposes Petitioner's request for authorization to file a motion.

Based on the information available at this time and given the short time to the Oral Hearing, Petitioner's request is granted. We authorize Petitioner to file a seven page Motion to Strike, and Patent Owner to file a seven page Opposition. No Reply is authorized.

It is:

ORDERED that Petitioner is authorized to file a Motion to Strike Exhibit 2044 and the portions of Patent Owner's Sur-Reply that cite to, or rely on, Exhibit 2044;

FURTHER ORDERED that the Motion to Strike is limited to seven (7) pages, and is due no later than five (5) business days from the date of this Order;

FURTHER ORDERED that Patent Owner is authorized to file an Opposition to the Motion to Strike; and

FURTHER ORDERED that the Opposition to the Motion to Strike is limited to seven (7) pages, and is due no later than five (5) business days from the date that Petitioner's Motion to Strike is filed.

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Patent 9,655,945 B2

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