

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUPERCELL OY,
Petitioner,

v.

GREE, INC.,
Patent Owner.

Case PGR2018-00008
Patent 9,597,594 B2

Before MICHAEL W. KIM, TIMOTHY J. GOODSON, and
AMANDA F. WIEKER, Administrative Patent Judges.

KIM, *Administrative Patent Judge.*

ORDER

Granting Patent Owner's Request to File a Sur-Reply
37 C.F.R. § 42.5(a)

On September 17, 2018, a telephone conference was held between Judges Kim, Goodson, and Wieker, and counsel for each of Patent Owner and Petitioner, to discuss Patent Owner's request to file a sur-reply in light of the *Office Patent Trial Practice Guide, August 2018 Update* ("TPG Update")¹. According to Patent Owner, authorizing a sur-reply is consistent with the TPG Update, which 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." "[S]ur-reply practice essentially replaces the previous practice of filing observations on cross-examination testimony." *Id.* Also consistent with the TPG Update, Patent Owner requests that the sur-reply be due on currently scheduled Due Date 4, i.e., October 24, 2018, and under the same terms as set forth for the sur-replies in the TPG Update, e.g., 5,600 words. Petitioner opposes the request, asserting that sur-replies are normally granted only on a case-by-case basis, and citing certain Board decisions concerning sur-replies. Patent Owner responds that the Board decisions cited by Petitioner are prior to the TPG Update, and, thus, not germane. We are persuaded for the reasons provided by Patent Owner.

It is ORDERED that Patent Owner's request to file a sur-reply by Due Date 4 is *granted*.

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

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