

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TWITTER, INC.,
Petitioner,

v.

VIDSTREAM, LLC,
Patent Owner.

Case IPR2017-00829 (Patent 9,083,997 B2)
Case IPR2017-00830 (Patent 9,083,997 B2)
Case IPR2017-01131 (Patent 8,464,304 B2)
Case IPR2017-01133 (Patent 8,601,506 B2)¹

Before SALLY C. MEDLEY, CHARLES J. BOUDREAU, and
JESSICA C. KAISER, *Administrative Patent Judges*.

KAISER, *Administrative Patent Judge*.

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

¹ This Order will be entered in each case. The parties are not authorized to use this caption style.

IPR2017-00829 (Patent 9,083,997 B2)
IPR2017-00830 (Patent 9,083,997 B2)
IPR2017-01131 (Patent 8,464,304 B2)
IPR2017-01133 (Patent 8,601,506 B2)

On August 27, 2018, Patent Owner contacted the Board by e-mail seeking permission to file sur-replies in the above-captioned cases in lieu of observations on cross-examination. Ex. 3008. Patent Owner contends that its request is consistent with the recent updates to the Board’s Trial Practice Guide and will “afford Patent Owner an opportunity to address new evidence and new arguments first raised in Petitioner’s recent Replies.” *Id.* Patent Owner represents that Petitioner opposes its request. *Id.*

The August 2018 Update to the Trial Practice Guide² (“Trial Practice Guide Update”) states 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.” Trial Practice Guide Update 14. The Trial Practice Guide Update further states that its “sur-reply practice essentially replaces the previous practice of filing observations on cross-examination testimony.” *Id.*

We entered an Order in these proceedings updating the schedule on May 14, 2018.³ That Order sets DUE DATE 4 for “[o]bservations regarding cross-examination of reply witness” as September 14, 2018. Patent Owner does not seek to change DUE DATE 4, but rather seeks to file a sur-reply instead of observations. *See* Ex. 3008.

We determine Patent Owner’s request is consistent with the Trial Practice Guide Update, and that request is granted. Patent Owner’s sur-reply shall be subject to the limits discussed in the Trial Practice Guide Update,

² Available at <https://go.usa.gov/xU7GP>.

³ Paper 38 in IPR2017-00829; Paper 39 in IPR2017-00830; Paper 38 in IPR2017-01131; Paper 35 in IPR2017-01133.

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including that the sur-reply may only respond to arguments made in Petitioner's reply brief, comment on reply declaration testimony, or point to cross-examination testimony; and may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness. Trial Practice Guide Update 14–15. In addition, Patent Owner's sur-reply is subject to the same word limit as Petitioner's reply. *Id.* at 6.

For the foregoing reasons, it is

ORDERED that Patent Owner's request to file a sur-reply in lieu of observations is *granted*; and

FURTHER ORDERED that the Scheduling Order (Paper 13) as amended by the May 14, 2018 Order is further revised to reflect DUE DATES 4–7 provided in the Due Date Appendix below but is unchanged in all other respects.

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DUE DATE APPENDIX

DUE DATE 4 September 14, 2018

Patent Owner's sur-reply to Petitioner's reply to patent owner's
response to petition

Motion to exclude evidence

Request for oral argument

DUE DATE 5..... September 28, 2018

Opposition to motion to exclude

DUE DATE 6 October 5, 2018

Reply to opposition to motion to exclude

DUE DATE 7 October 19, 2018

Oral argument (if requested)

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