

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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3M Company, Merck & Co., Inc., and Merck Sharp & Dohme Corp.

Petitioners,

v.

AptarFrance S.A.S.,

Patent Owner.

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Case IPR2018-01055  
Patent No. 9,370,631 B2

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**PETITIONERS' RESPONSE TO PATENT OWNER'S  
MOTION TO STRIKE**

Aptar's Motion to Strike Portions of Petitioners' Reply (Paper 32) should be denied.<sup>1</sup> *See Trial Practice Guide Update*, August 2018, at p. 18 (“[S]triking the entirety or a portion of a party’s brief is an exceptional remedy that the Board expects will be granted rarely.”). The portions of Petitioners’ Reply that Aptar seeks to strike were properly presented by Petitioners in its Reply (Paper 28) as they are either (1) not new or (2) were provided in direct response to arguments presented in Aptar’s Corrected Patent Owner Response (“Aptar’s Response”) (Paper 27). *See* 37 C.F.R. § 42.23(b) (authorizing petitioner to respond to arguments raised in patent owner response); *see also Ericsson Inc. v. Intellectual Ventures I LLC*, 901 F.3d 1374, 1380 (Fed. Cir. 2018) (vacating Board’s decision to strike portions of petitioner’s reply “[g]iven the admissions within the [] patent itself [and] the arguments raised in the Petition.”). Pursuant to the Board’s June 11, 2019 email, Petitioners provide the following list identifying the arguments to which Petitioners were responding.

- 1) Aptar’s Response, page 22, lines 6-10 (“Marelli does not . . .”);  
Petition, page 46, lines 3-4 (“Marelli teaches . . .”);

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<sup>1</sup> Aptar was more than two weeks late in requesting authorization to file its motion to strike. *See Trial Practice Guide Update*, August 2018, at p. 18 (“Generally, authorization to file a motion to strike should be requested within one week of the allegedly improper submission.”).

- 2) Aptar's Response, page 35, lines 1-3 ("The Bason cap . . .");
- 3) Aptar's Response, page 50, lines 11-15 ("In addition . . .");
- 4) Aptar's Response, page 38, lines 5-9 ("However, if . . .");  
Aptar's Response, page 53, lines 6-9 ("And even if . . .");  
Petition, page 56, lines 6-10 ("Moreover, in . . .");  
Petition, page 68, lines 10-14 ("A POSA would have had . . .");
- 5) Aptar's Response, page 55, lines 2-9 ("Bason discloses that . . .");  
Piper Dep. Tr., Ex. 2019 at 129:9-14.

Respectfully submitted,

Dated: June 25, 2019

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Dohme Corp.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Petitioners' Response to Patent Owner's Motion to Strike was served on counsel of record on June 25, 2019, by filing this document through the End-to-End System, as well as delivering a copy via electronic mail to the counsel of record for the Patent Owner at the following address:

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