

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZERO GRAVITY INSIDE, INC.,
Petitioner,

v.

FOOTBALANCE SYSTEM OY,
Patent Owner.

IPR2015-01769 (Patent 7,793,433 B2)
IPR2015-01770 (Patent 8,171,589 B2)

Before MEREDITH C. PETRAVICK, JEREMY M. PLENZLER, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

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

On November 6, 2015, a conference call was held between counsel for the parties and Judges Petravick, Plenzler, and Goodson. The parties jointly initiated the conference call. This order summarizes the conference call and provides additional guidance to the parties.

According to the parties, Patent Owner intends to raise a real-party-in-interest issue in the preliminary response, which is due on

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November 27, 2015 in each of these proceedings. Patent Owner intends to rely upon information obtained under a protective order in an arbitration proceeding with a third party. The information relates to the relationship between Petitioner and the third party, and, according to the parties, the third party would allow the Patent Owner to use the information in this proceeding if Petitioner agreed to its use. In this regard, Petitioner agreed to not oppose Patent Owner's use of the information if the Board would allow Petitioner to file a reply to the preliminary response and if confidentiality concerns are addressed by redactions of the information or entry of a protective order. The parties, thus, requested authorization for Petitioner to file a reply to the preliminary response and for Patent Owner to file a sur-reply.

During the call, the Board denied the parties' request. Our rules do not provide for a reply to a preliminary response, and the agreement described above is not a sufficient reason to deviate from the rules. Further, Petitioner's request is premature as the preliminary response raising a real-party-in-interest issue has not yet been filed. Petitioner may initiate another conference call with the Board to seek authorization to file a reply after the preliminary response is filed.

Should Patent Owner intend to rely upon information that Petitioner may consider to be confidential, Patent Owner should confer with Petitioner as to whether or not the information is confidential pursuant to our rules. If Petitioner asserts that the information is confidential, then Patent Owner should file the information as confidential in the Patent Review Processing System, and either the Petitioner or the parties, jointly, should file a corresponding motion to seal. For additional guidance as to requirements

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for a motion to seal, *see Garmin International, Inc. v. Cuozzo Speed Technologies, LLC*, IPR2012-00001, Paper 34, 4–5 (March 14, 2013).

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