

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNDER ARMOUR, INC.,
Petitioner,

v.

ADIDAS AG,
Patent Owner.

Case IPR2015-00698 (Patent 8,092,345 B2)
Case IPR2015-00700 (Patent 8,579,767 B2)

Before JENNIFER S. BISK, *Administrative Patent Judge*.

ORDER
Routine Discovery
37 C.F.R. § 42.51(b)(1)(i)

Case IPR2015-00698 (Patent 8,092,345 B2)

Case IPR2015-00700 (Patent 8,579,767 B2)

On March 17, 2016, counsel for both parties participated in a call with Judge Bisk. Patent Owner requested the call to discuss the upcoming cross-examination of two of Petitioner's declarants. On the call, Patent Owner explained that it seeks to use certain deposition transcripts, and exhibits referred to in those transcripts, in its cross-examination of Dr. Paradiso and Ms. Davis. The deposition transcripts, seven in total, are all referred to in declarations filed with Petitioner's Reply Brief. IPR2015-00698, Paper 27; Ex. 1011, 27; Ex. 1014, 4; IPR2015-00700, Paper 31; Ex. 1016, 4.

During the call Petitioner offered to allow Patent Owner to use the entirety of these seven depositions during the cross-examinations, but not the underlying exhibits, which Petitioner represented were not reviewed by the declarants and are not mentioned in the declarations.

We agree that the depositions, but not the underlying exhibits, are routine discovery under § 42.51(b)(1)(i). Petitioner opened the door to the use of the cited depositions in this proceeding when it filed declarations relying upon their content. As stated on the call, during cross-examination Patent Owner may question the declarants on what material they reviewed in preparing their declarations.

It is

ORDERED that the depositions referred to above are routine discovery under 37 C.F.R. § 42.51(b)(1)(i).

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