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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	92083907
Party	Defendant VIZIO, Inc.
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Date	11/25/2024
Attachments	2024-11-25 Motion to Strike Reply Brief - VIZIO.106N.pdf(36481 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GD Plus LLC,

Petitioner,

v.

VIZIO, Inc.,

Respondent.

Cancellation No.: 92083907

Registration No.: 7,208,240

Mark: ENACT

RESPONDENT’S MOTION TO STRIKE PETITIONER’S

REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Pursuant to TBMP § 517, Respondent VIZIO, Inc., (“Respondent”) objects to and hereby moves to strike in its entirety Petitioner GD Plus LLC’s (“Petitioner”) Reply to Respondent’s Opposition to Petitioner’s Motion for Summary Judgment (“Petitioner’s Reply Brief”) submitted on November 18, 2024, for exceeding the permissible ten-page limit for a reply brief.

LEGAL STANDARD

A reply brief in front of the Trademark Trial and Appeal Board (“Board”) may not exceed ten pages. TBMP § 502.02(b). This ten-page limit includes any “table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary,” and excludes only exhibits. *See* 37 CFR § 2.127(a). With regard to briefs on motions, the Board’s rules and 37 CFR § 2.127(a) do not require an index of cases and authorities or a table of contents. Nevertheless, if a party elects to include these items in a reply brief, they will count as part of the ten-page limit for the brief. *See Saint-Gobain Corp. v. Minnesota Mining and Manufacturing Co.*, 66 USPQ2d 1220, 1222 (TTAB 2003); *Mattel Inc. v. Brainy Baby Co.*, 101 USPQ2d 1140, 1141

(TTAB 2011) (over-length reply brief included a table of contents and a table of authorities). Any brief that exceeds the page limits set out in TBMP § 502.02(b) shall be stricken in its entirety and receive no consideration from the Board. *See Mattel*, 101 USPQ2d at 1141.

**PETITIONER’S REPLY BRIEF EXCEEDS THE
TEN-PAGE LIMIT AND SHOULD BE STRICKEN IN ITS ENTIRETY**

Petitioner’s Reply Brief exceeds the permissible page limits as outlined in TBMP § 502.02(b) and 37 CFR § 2.127(a) and should be stricken in its entirety. On November 18, 2024, Petitioner filed Petitioner’s Reply Brief, which is twelve pages long, consisting of a table of contents, a two-page table of authorities, and nine pages of text. 12 TTABVUE. Accordingly, Petitioner’s Reply Brief exceeds the prescribed limit of ten pages for reply briefs in support of motions and should receive no consideration by the Board. *See* TBMP § 502.02(b); *Mattel*, 101 USPQ2d at 1141.

The deadline for Petitioner to file a reply brief has passed. Accordingly, in keeping with 37 CFR § 2.127(e) (“[t]he time for filing a reply brief will not be extended or reopened”), the Board should not accept a revised reply brief from Petitioner, nor grant leave for Petitioner to submit a revised reply brief.

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In conclusion, Petitioner's Reply Brief is twelve pages and exceeds the ten-page limit for reply briefs in support of motions, and should be stricken in its entirety. Respondent respectfully requests that Petitioner's Reply Brief receive no consideration from the Board with respect to the pending summary judgment motion.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 25, 2024

By: /Gregory Phillips/

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **RESPONDENT'S MOTION TO STRIKE PETITIONER'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** has been served on the Petitioner's counsel of record on November 25, 2024 via electronic mail to:

Deborah Nessel

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Signature: */Thomas Chmura/*

Name: Thomas Chmura

Date: November 25, 2024