

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

July 26, 2023

RAVI SHARMA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00023
)	
NVIDIA CORP.,)	
Respondent.)	
_____)	

Appearances: Ravi Sharma, pro se Complainant
Patrick Shen, Esq., K. Edward Raleigh, Esq., and Samantha Caesar, Esq.,
for Respondent

ORDER ON COMPLAINANT’S MOTIONS SEEKING LEAVE TO FILE
ADDITIONAL SUBMISSIONS ON SUMMARY DECISION

I. BACKGROUND

On March 13, 2023, Respondent, NVIDIA Corporation, filed a Motion for Summary Decision. *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450i, 1 (2023).¹

On April 10, 2023, Complainant, Ravi Sharma, filed his response. *Id.* at 2.

¹ Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

On May 2, 2023, Respondent filed a “Reply to Complainant’s Response to Respondent’s Motion for Summary Decision.”² *Id.*

On May 11, 2023, Complainant submitted two filings: a “Motion for Leave of Court to File Counterresponse to Respondent’s Motion for Leave to Reply to Complainant’s Response to Respondent’s Motion for Summary Decision, and Respondent’s Reply in Support of Respondent’s Motion for Summary Decision Dated May 1, 2023,”³ and a “Counterresponse to Respondent’s Reply in Support of Respondent’s Motion for Summary Decision.”⁴

On May 18, 2023, Complainant filed a “Motion for Leave of Court to Include Complainant’s Motions Dated March 13, 2023 and April 5, 2023 in the Record.”⁵

On May 22, 2023, Complainant filed a “Motion for Leave of Court to File Sur-response to Respondent’s Motion for Leave to Reply to Complainant’s Response to Respondent’s Motion for Summary Decision and Respondent’s Reply in Support of Respondent’s Motion for Summary Decision Dated May 1, 2023.”⁶ On the same day, Complainant filed a motion entitled “Sur-response to Respondent’s Reply in Support of Respondent’s Motion for Summary Decision.”⁷

On May 30, 2023, Respondent filed an opposition to Complainant’s May 18 Motion.

In total (and excluding the substantive submissions), the Court received three motions from the Complainant wherein he requested he be granted leave for proposed additional submissions—the May 11 Motion, May 18 Motion, and May 22 Motion.

In his various motions, Complainant requests the Court consider his additional filings because he claims Respondent raised new issues to which he desires an opportunity to respond. Further, he notes he did not understand 28 C.F.R. § 68.11(b), which provides that “[u]nless the

² Respondent timely sought and was granted leave to provide its Reply filing. *See Sharma*, 17 OCAHO no. 1450i, at 3.

³ The Court will refer to this submission as “May 11 Motion.” The Court advises Complainant to keep future filing names brief for clarity.

⁴ The Court will refer to this submission as “May 11 Sur-response.”

⁵ The Court will refer to this submission as “May 18 Motion.”

⁶ The Court will refer to this submission as “May 22 Motion.”

⁷ The Court will refer to this submission as “May 22 Sur-response.”

Administrative Law Judge provides otherwise, no reply to a response, counterresponse to a reply, or any further responsive document shall be filed.”⁸ See May 18 Mot.; May 22 Mot.

In its opposition, Respondent asserts that the Court has already denied two of Complainant’s at-issue filings and should not reconsider its decision. Resp’ts May 30 Opp’n. 1.

This Order shall analyze only the propriety of accepting or rejecting the additional filings. Accepting a filing merely means the Court will consider it. Indeed, to the extent they are accepted, the contents of the Complainant’s additional submissions are more appropriately considered in conjunction with the pending summary decision motion.

II. LAW & DISCUSSION

The Court has discretion to accept reply and sur-reply filings (or not). 28 C.F.R. § 68.11(b); *A.S. v. Amazon Web. Servs. Inc.*, 14 OCAHO no. 1381e, 2 n.3 (2021) (citing 28 C.F.R. § 68.11(b)) (“Generally, replies and sur-replies are prohibited, unless the Court provides otherwise.”).

Motions for leave serve important functions by allowing the Court to control the creation of the administrative record and conserve judicial resources. See *Zakarneh v. Intel Corp.*, 16 OCAHO no. 1414b, 2–3 (2022) (discussing leave to file amicus briefs). Parties seeking leave to file a reply must show good cause to warrant accepting the reply. See *Sharma v. NVIDIA Corp.*, 17 OCAHO 1450d, 2 (2023) (citing, inter alia, *Brown v. Pilgrim’s Pride Corp.*, 14 OCAHO no. 1379b, 1 (2022)). The Court is inclined to grant motions that favor further record development and provide an opportunity for parties to be heard on novel issues or argument. See *Heath v. Ameritech Global*, 16 OCAHO 1435, 3 (2022) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313–14 (1950)) (stating that the opportunity to be heard is essential to procedural due process).

A. May 11 and May 22 Motions

In his May 11 Motion, Complainant requests leave to file a sur-response to Respondent’s May 2, 2023, “Reply in Support of Respondent’s Motion for Summary Decision.”⁹ May 11 Mot. 1. Complainant argues that Respondent’s reply was untimely and did not address new arguments.

⁸ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

⁹ The Court granted Respondent’s Motion for Leave to file a “Reply to Complainant’s Response to Respondent’s Motion for Summary Decision” in its May 4, 2023, Order on Status of the Record and Pending Motions Before the Court. See *Sharma*, 17 OCAHO no. 1450i, at 3.

Id. Complainant’s proposed sur-response asks the Court to reconsider its acceptance of Respondent’s May 2, 2023, reply. May 11 Sur-resp. 1. Respondent has not opposed this motion.

In his May 22 Motion, Complainant repeats his May 11 Motion with the word “counterresponse” replaced with “sur-response.” May 22 Mot. 1. There are no other changes between Complainant’s May 11 Motion and May 22 Motion. *See* May 11 Mot.; May 22 Mot. Similarly, Complainant’s May 22 Sur-response is identical to his May 11 Sur-response besides the replacement of “counterresponse” with “sur-response.” *See* May 22 Sur-resp. Respondent also did not oppose this motion.

In the interest of developing the record, the Court finds Complainant has shown good cause in his May 22 Motion. Respondent’s May 2 filing raised new issues which Complainant did not have an opportunity to address previously. *Cf., e.g., Ramirez v. Davis*, No. 21-160444, 2022 WL 2800818, at *1, 2022 U.S. App. LEXIS 19806, at *2 (9th Cir. 2022) (affirming district court’s denial of plaintiff’s request for leave to file sur-reply where no new issues were raised by defendants’ reply necessitating more argument).¹⁰ Further, Respondent has not opposed the motion.

Accordingly, Complainant’s May 22 Motion for Leave is GRANTED. The Court will consider Complainant’s May 22 Sur-response. Complainant’s May 11 Motion for Leave is DENIED AS MOOT.

B. May 18 Motion

In his May 18 Motion, Complainant asks the Court for leave to file his previously submitted March 21, 2023, “Motion to Strike Respondent’s Irrelevant Record” and April 10, 2023, “Motion to Strike Declaration of [Hiring Official] and Exhibits of Declaration of [Hiring Official].” May 18 Mot. 1.

The Court previously denied Complainant’s March 21 and April 10, 2023, motions as impermissible replies because they were filed without leave and sought discovery relief. *Sharma*, 17 OCAHO no. 1450i, at 2 (noting that the Court previously advised the parties that the “appropriate method to submit evidence for substantive consideration was by way of attachment to a dispositive motion filing” (citing *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450e, at 2 n.6 (2023))). Complainant explains he did not understand the requirements of 28 C.F.R. § 68.11(b) and did not understand the meaning of the term “dispositive motion.” May 18 Mot. 1.

¹⁰ Since the allegations at issue in this case occurred in California, the Court may look to the case law of the relevant United States Court of Appeals, here the Ninth Circuit. *See* 28 C.F.R. § 68.57.

Respondent opposed Complainant's May 18 Motion because the Court had already denied both at-issue filings. Resp'ts May 30 Opp'n. 1. Respondent argues Complainant's May 18 Motion should be construed as a motion to reconsider, and Complainant did not identify new facts or law to support his motion. *Id.* at 1–2. Further, Respondent requests if the Court grants Complainant's May 18 Motion that it also considers Respondent's responses to Complainant's at-issue motions filed on March 22 and April 19, 2023. *Id.* at 3; *Sharma*, 17 OCAHO 1450i, at 1 nn.2–3.

Much of Complainant's May 18 Motion would be better characterized as a motion to reconsider because it is asking the Court to reassess its decision to deny two of Complainant's filings. To the extent Complainant's May 18 Motion is an indirect attempt to ask the court to reconsider his filings, that motion is DENIED.

However, insofar as the May 18 Motion attempts only to renew evidentiary arguments made in the identified filings, the Court will consider such a motion. To the extent Respondent relies on the at-issue deposition and declaration portions in its Motion for Summary Decision, the Court will consider Complainant's arguments about the admissibility and relevance of the evidence when it adjudicates the Motion for Summary Decision. Thus, only with respect to these arguments, Complainant's May 18 Motion is GRANTED. The Court will also consider Respondent's responses to the at-issue filings with the same caveat.

Summary decision (and not discovery) is the appropriate time, procedurally, for parties to advance arguments related to the admissibility of evidence. It's worth noting that Complainant's method of advancing these arguments "a la carte" (prematurely and in multiple filings) is not a best practice and is discouraged. It is confusing to the Court; unnecessarily utilizes judicial resources, and it causes delay in adjudicating summary decision.

Ultimately, because of a strong interest in both record development and allowing parties to be heard, the Court is inclined to overlook Complainant's filing practice only in this instance, and will consider his evidentiary arguments (and those of the Respondent). Accordingly, Complainant's May 18 Motion for Leave is GRANTED IN PART as outlined above. To the extent Complainant seeks reconsideration of prior decisions, that motion is DENIED.

III. CONCLUSION

Complainant's May 22 Motion for Leave is GRANTED. Complainant's May 11 Motion for Leave is DENIED AS MOOT.

Complainant's May 18 Motion for Leave is GRANTED IN PART with respect to arguments about the evidence relied upon by Respondent in its Motion for Summary Decision.

As a result, the Court will consider Complainant's May 22 Sur-response and will consider his March 21 and April 10 Motions to Strike in a limited capacity. The Court will also consider Respondent's March 22 and April 19 oppositions in a limited capacity as it adjudicates the Respondent's pending Motion for Summary Decision.

SO ORDERED.

Dated and entered on July 26, 2023.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge