

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG ELECTRONICS  
AMERICA, INC.  
Petitioners,

v.

MANUFACTURING RESOURCES INTERNATIONAL, INC.  
Patent Owner

U.S. Patent No. 9,173,322

Title: CONSTRICTED CONVECTION COOLING SYSTEM FOR AN  
ELECTRONIC DISPLAY

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*Inter Partes* Review No. IPR 2023-00220

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**PETITIONERS' MOTION TO SUBMIT SUPPLEMENTAL  
INFORMATION UNDER 37 C.F.R § 42.123(a)**

Mail Stop PATENT BOARD  
Patent Trial and Appeal Board  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Pursuant to 37 C.F.R. § 42.123(a) and as authorized by the Board per the email dated July 21, Petitioners move to submit supplemental information.

On July 5, 2023, Patent Owner (“PO”) filed objections to evidence filed with the Petition. *See* Paper No. 14. Among the objections, PO objected to Exhibits 1008, 1010, 1026, and 1028 which are English translations of foreign-language references. PO stated that the translations do not comply with 37 C.F.R. § 42.63(b), alleging that the signatory of the translation lacked knowledge of the subject language or was not the translator. *See* Paper No. 14 at 3-5 and 13-14. PO did not argue that the translations are inaccurate. As explained below, PO’s narrow objection is flawed.

Moreover, on July 19 Petitioner served upon PO (but did not file with the Board) supplemental affidavits, i.e., supplemental certifications of translation accuracy for Exhibits 1008, 1010, 1026, and 1028, confirming the accuracy of the translations provided with the Petition. On July 20 Petitioner informed the Board of this service and requested authorization to submit the supplemental affidavits as supplemental information. The Board granted this request by email on July 21, pursuant to which Petitioners file this motion and supplemental information Exhibits 1041-1046.

## **I. Legal Standard**

A party may move to submit supplemental information that is “relevant to a claim for which the trial has been instituted.” 37 C.F.R. § 42.123(a)(2). “A request for the authorization to file a motion to submit supplemental information [must be] made within one month of the date the trial is instituted.” *Id.*

## **II. Factual Background**

The instant Petition for the *inter-partes* review (IPR) of U.S. Patent No. 9,173,322 was filed on December 5, 2022 with Exhibits 1001-1038. *See* Paper No. 3. Exhibits 1008, 1026, and 1028 are certified translations of Japanese patent application publications: H11-68363 (Takahashi, Reference No. JP 1999-068363A); 2006-330196 (Tachikawa, Reference No. JP 2006330196A); and 2003-162228 (Kochiyama, Reference No. JP 2003-162228A). Exhibit 1010 is a certified translation of Korean patent application publication 10-2006-0016469 (Na, Reference No. KR 2006-0016469). Exhibits 1008, 1010, and 1028 include certificates of translation, as required by 37 C.F.R. § 42.63(b), signed by Dan McCourt. Exhibit 1026 includes a certificate of translation, as required by 37 C.F.R. § 42.63(b), signed by Jacqueline Yorke.

On July 5, 2023, PO filed objections to evidence filed with Petition. Paper No. 14. PO objected to Exhibits 1008, 1010, 1026, and 1028 as allegedly failing to comply with 37 C.F.R. § 42.63(b) because each “affidavit fails to allege that the

signatory has any knowledge of the subject language . . . or that the signatory was the individual that actually translated the subject text.” *Id.* at 3-5 and 13-14.

### III. Argument

#### A. Originally Filed Exhibits 1008, 1010, 1026 and 1028 Are Compliant With 37 C.F.R. § 42.63(b)

PO’s allegation that Exhibits 1008, 1010, 1026, and 1028 fail to comply with 37 C.F.R. § 42.63(b) is incorrect. 37 C.F.R. § 42.63(b) provides that when a party relies on a foreign-language document, “a translation of the document into English and an *affidavit attesting to the accuracy of the translation* must be filed with the document.” 37 C.F.R. § 42.63(b) (emphasis added).

Contrary to PO’s allegation, 37 C.F.R. § 42.63(b) does not require that the affiant signatory “has any knowledge of the subject language” or that “the signatory was the individual that actually translated the subject text.” Rather, the affiant needs only to “attest[] to the accuracy of the translation.” PO’s interpretation of the Rule and objection is directly contradicted by the Board’s holding in *Globus Med., Inc. v. Moskowitz Fam. LLC*, where the Board ruled as follows:

Also, we determine Patent Owner's argument that the certification was not signed by the linguist with personal knowledge of the accuracy of the translation is *unpersuasive of a deficiency* on the current record. . . . Our rules require a translation, but *do not require the certification to be signed by someone with personal knowledge of the translation*.

No. IPR2020-01306, 2021 WL 75106, at \*8 (PTAB. Jan. 8, 2021) (citations omitted) (emphasis added). Thus, the PO's alleged requirements that the affiant signatory should have "knowledge of the subject language" or that "the signatory was the individual that actually translated the subject text" are incorrect.

Mr. McCourt's and Ms. Yorke's original certifications comply with this guidance. In each of the certificates of translation included with Exhibits 1008, 1010, 1026 and 1028, Mr. McCourt or Ms. Yorke attested under the penalty of perjury that the translation "is true and accurate, to the best of [his] knowledge and belief." Ex. 1008 at 6; Ex. 1010 at 23; Ex. 1026 at 10, Ex. 1028 at 9. Accordingly, Petitioner respectfully submits that the certificates of translations included in Exhibits 1008, 1010, 1026, and 1028 are compliant with 37 C.F.R. § 42.63(b).

**B. Supplemental Information Exhibits 1041-1046 Cure The Alleged Defects in Any Event**

Even if the Board were to find that the original certifications were deficient, such a deficiency "is not fatal, as the Board routinely allows a Petitioner to correct such a declaration." *Globus Med.*, 2021 WL 75106, at \*7 (quotation omitted). Supplemental certifications are properly submitted as supplemental information. *see, e.g., Valeo N. Am., Inc. v. Magna Elecs., Inc.*, IPR2014-01204, Paper 26 at 5 (PTAB 2015) ("Nothing in the Board's rules prohibits a party from filing, as supplemental information, evidence which also is responsive to evidentiary

objections.”); *Uber Tech., Inc. v. X One, Inc.*, IPR2017-01255, Paper 20 at 5 (PTAB 2017) (same).

Supplemental Exhibits 1044 and 1045 are affidavits signed by Mr. McCourt, who also signed the affidavits in Exhibits 1008, 1010, and 1028. In these supplemental affidavits, Mr. McCourt affirms that TransPerfect Translations Ltd. (“TransPerfect”) is an ISO certified translation agency, and that Mr. McCourt is “a project assistant . . . who oversaw the translation process.” Exs. 1044 and 1045. Mr. McCourt also confirms that the translations “conform[] with [TransPerfect’s] Quality Management System” and are “true and accurate.” *Id.* These attestations comply with *Globus Med.* where the Board found an affidavit signed by a translation service manager to be sufficient. *See Globus Med.*, 2021 WL 75106, at \*7. Thus, Exhibits 1044 and 1045 cure any alleged deficiencies in Exhibits 1008, 1010, 1026 and 1028, and Petitioner should be allowed to submit them.

Further, supplemental Exhibits 1041 and 1046 are affidavits signed by Ms. Natalia Lehman, referring, respectively, to Ex. 1026, Reference No. JP 2006-330196A and Ex. 1008, Reference No. JP 1999-068363A. Ms. Lehman states that she is “a translator fluent in the Japanese and English languages,” and that the translation of each of Reference Nos. JP 2006-330196A and JP 1999-068363A is “a true and correct translation.” Ex. 1041; Ex. 1046. Likewise, supplemental Exhibit 1042 is an affidavit signed by Mr. Brian Toth, and refers to Ex. 1028, Reference No.

JP 2003-162228A. Mr. Toth states that he is “a translator fluent in the English and Japanese languages,” and that Reference No. JP 2003-162228A is “a true and correct translation.” Ex. 1042. Supplemental Exhibit 1043 is an affidavit signed by Mr. Byoung-Go Kim, and refers to Ex. 1010, Reference No. KR 2006-0016469. Mr. Kim states that he is “a translator fluent in the Korean and English languages,” and that the translation of Reference No. KR 2006-0016469 is “a true and correct translation.” Ex. 1043.

Thus, Exhibits 1041-1043 and 1046 are signed by signatories having “knowledge of the subject language[s].” *See also Maplebear Inc. v. Consumeron, LLC*, No. IPR2022-01358, 2023 WL 2602371, at \*10 (PTAB Mar. 3, 2023) (finding an affidavit signed by a translator to be sufficient). Therefore, Exhibits 1041-1043 and 1046 squarely address PO’s concerns, regardless of whether those concerns are valid, and Petitioner should be allowed to submit the new declarations, i.e., Exhibits 1041-1043 and 1046. There are no arguments that the originally submitted translations were inaccurate and the supplemental declarations further confirm their accuracy.

#### **IV. Conclusion**

Petitioner respectfully requests that: (i) the Board grant this motion, or (ii) in the alternative, find that the respective certifications included with Exhibits 1008, 1010, 1026, and 1028 are compliant with 37 C.F.R. §42.63(b).

IPR2023-00220  
U.S. Patent No. 9,173,322

Respectfully submitted,

Date: July 28, 2023

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**CERTIFICATE OF SERVICE**

A copy of this Petitioners' Motion to Submit Supplemental Information Pursuant to 37 C.F.R. § 42.123(a), an updated Exhibit List, and Exhibits 1041-1046 have been served on counsel for Patent Owner by email upon the following addresses as listed in Patent Owner's Mandatory Notices:

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Respectfully submitted,  
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Date: July 28, 2023

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