

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUNTER'S MANUFACTURING COMPANY, INC.
d/b/a TENPOINT CROSSBOW TECHNOLOGIES,
Petitioner,

v.

RAVIN CROSSBOWS, LLC,
Patent Owner.

Case No. **IPR2023-00407**
Patent No. **9,354,015**

PETITIONER'S REPLY TO
PATENT OWNER'S PRELIMINARY RESPONSE

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

I. BACKGROUND

Patent Owner Ravin Crossbows, LLC (“Ravin”) sued Petitioner Hunter’s Manufacturing Company, Inc. d/b/a TenPoint Crossbow Technologies (“TenPoint”) in the District of Nevada for patent infringement. *Ravin Crossbows, LLC v. Hunter’s Mfg. Co.*, No. 2:21-cv-02213 (D. Nev.). TenPoint petitioned for an IPR of one of the patents. (Paper 1.) Anticipating Ravin’s arguments, the Petition discussed the *Fintiv* factors and explained why they do not support a discretionary denial of institution based on the status of the related matters at that time. (*Id.* at 4-7.) Before filing the Petition, TenPoint moved to transfer the case to the Northern District of Ohio, which motion was still pending when TenPoint filed its Petition. (*Id.* at 5.)

Ravin then filed its Preliminary Response. (Paper 9.) By that time, the Nevada Court granted TenPoint’s transfer motion, and the case moved to Ohio. (*Id.* at 2 (new case no. 5:23-cv-00598 (N.D. Ohio)).) The Preliminary Response made the predicted *Fintiv* arguments, also based on the status at that time. (*Id.* at 57-70.)

II. SUBSEQUENT EVENTS

Since then, several events occurred bearing on the *Fintiv* analysis. *First*, the Court issued an order scheduling a case management conference (“CMC”) for May 25, 2023. (Ex. 1022, 1.) In light of that CMC, the Court intended to tailor a Case Management Plan for the case. (*Id.* at 2.) Based on the Court’s review, the Court recommended that the “case be assigned to the **Complex Track.**” (*Id.*)

Second, TenPoint moved to stay the Ohio case pending completion of this IPR. The Stay Motion (Ex. 1023) and supporting Reply (Ex. 1024) explained that a stay will result in a simplification of the relevant issues and corresponding reduction in the burden of litigation on both parties and the Court, because the USPTO will lend its expert opinion to the heart of what Ravin itself repeatedly alleged is its innovation in the Patents-in-Suit. The case is still closer to its beginning than its end with much work remaining to be done (including narrowing claims, re-briefing claim construction issues, holding a claim construction hearing, resolving discovery disputes, preparing expert reports on infringement, invalidity, and damages, taking numerous depositions, preparing final contentions on infringement and invalidity, briefing dispositive motions, and preparing for and conducting trial itself). There are a plethora of issues and actions that must be addressed before the case is ready for trial, and the parties disagree on a number of them, which further supports staying the case until this IPR is resolved. Lastly, Ravin's own delay belies its claim of undue prejudice, underscored by its failure to seek a preliminary injunction. As part of that motion, TenPoint also asked the Court to postpone the CMC until it resolves the Stay Motion. (*See* Ex. 1023, 16.) As expected, Ravin opposed the Stay Motion.

Third, the Court granted TenPoint's motion to postpone the CMC indefinitely so that the Court has sufficient time to consider the Stay Motion. (Ex. 1025.)

Fourth, the U.S. Courts Administrative Office issued more recent Judicial

Caseload Profile statistics. (Excerpt for N.D. Ohio attached herein as Ex. 1026.)

In light of the above events, TenPoint sought and received permission to file this reply (*see* Paper 10), addressing their impact on the parties' *Fintiv* analysis. Only the factors affected by these events are discussed.

III. APPLICATION TO *FINTIV* ANALYSIS

Fintiv factor (1): TenPoint previously moved to stay the claim construction proceedings (which would effectively stay the rest of the case) until its transfer motion was resolved. (*See* Ex. 1021.) The Nevada Court denied that motion as moot when it granted TenPoint's transfer motion. (Paper 9, 58.) (This also renders moot Ravin's arguments about that motion, *see* Paper 9, 59.)

After the transfer, TenPoint moved to stay the case (now pending in Ohio) until this IPR is completed. The Stay Motion and supporting Reply explained in detail how every applicable factor favors a stay, rebutting Ravin's arguments to the contrary. The fact that the Court postponed the scheduled CMC to have sufficient time to consider the motion indicates, first, that the Court is not antagonistic to such stay requests (as perhaps some other, rocket-docket courts might be), and second, that the motion likely has merit, contrary to Ravin's assertion that the Court "would almost certainly deny" it (Paper 9, 59). Therefore, this factor favors institution. And even if the Board declines to predict how the Court will rule on the motion based on the circumstances of the case, that would render this factor neutral – certainly not in

favor of denial. *See Sand Revolution II, LLC v. Continental Intermodal Grp.*, No. IPR2019-01393 (Paper 24, 7) (P.T.A.B. Jun. 16, 2020) (informative).

Fintiv factor (2): There still is no trial date in the parallel case. The Court's CMC Scheduling Order indicated that, after the CMC, the Court "will likely set a tentative pre-trial conference date and a tentative trial date, in order to have a long-range goal." (Ex. 1022, 2.) The "likely" qualifier shows that the Court might not even set a date at this stage and instead wait until after a claim construction order issues (which affects various subsequent events, including trial, per the District's Local Patent Rules, available at <https://www.ohnd.uscourts.gov/local-patent-rules>, see N.D. Ohio L. P. R. 3.10(b)-(d), 4.7, 5.1, 5.2, 6.1, 6.2). Even if a trial date is set, it would be "tentative." *Accord Fintiv* Memorandum (referenced at Paper 1, n.1), 8 ("scheduled trial dates are unreliable and often change"). But more importantly, because the CMC has not yet happened but instead was postponed, not even a tentative trial date is anticipated anytime soon. And if and when the Court does set a trial date, the Court's recommendation that the case be assigned to the Complex Track indicates that the Court will not rush this case heedlessly to an imminent trial.

When TenPoint filed its Petition, the current time-to-trial statistics were those for the 12-month period ending June 30, 2022. (*See* Ex. 1017.) When Ravin filed its Preliminary Response, more recent statistics were available, for the time period ending December 31, 2022. (*See* Ex. 2010.) Since then, even more-recent statistics

have been released, for the 12-month period ending March 31, 2023. (*See* Ex. 1026.) As shown there, the Northern District of Ohio (where the parallel case is pending) has a median filing-to-trial time for civil cases of 37.1 months. This is even *longer* than the 36.2-month statistic when TenPoint’s Petition was filed (Paper 1, 5), which further supports TenPoint’s argument on this factor. In discussing its Exhibit 2010, Ravin takes the average of six years (though two of them have no data), and its Exhibit 2011 analyzes data going back to 2009. (*See* Paper 9, 63.) But that is living in the past – the case is not pending in 2009, or even 2017 or 2019; it is pending in 2023, so “the most recent statistics” should be utilized. *Fintiv* Memorandum, 8. Thus, these recent developments further support that a trial would happen after the final written decision in this IPR, which favors not denying institution under *Fintiv*.

Fintiv factor (3): Neither the Nevada Court nor the Ohio Court has made any investment into the merits of the parallel case. The Nevada Court merely ruled on TenPoint’s Motion to Transfer, denying all other pending motions as moot, and not conducting claim construction. The Ohio Court has not held any hearings or made any rulings on the merits either. Instead, it postponed the CMC to have sufficient time to consider TenPoint’s Stay Motion.

Therefore, in light of the explanation in TenPoint’s Petition, as further reinforced by the above-discussed subsequent developments, the Board should not exercise its discretion to deny institution in light of *Fintiv*.

Date: June 10, 2023

Respectfully submitted,

/Sergey Vernyuk/

Sergey Vernyuk, USPTO Reg. No. 71,283

Emerson, Thomson & Bennett, LLC

1914 Akron-Peninsula Road

Akron, Ohio 44313

330-434-9999

sv@etblaw.com

Backup Counsel for Petitioner

LIST OF EXHIBITS

Ex. 1001	U.S. Patent No. 9,354,015 (“the ‘015 Patent”)
Ex. 1002	Prosecution History of U.S. Patent No. 9,354,015
Ex. 1003	LPR 1-15 Joint Claim Construction and Prehearing Statement
Ex. 1004	Defendant’s (Petitioner) LPR 1-14 Proposed Constructions
Ex. 1005	Plaintiff’s (Patent Owner) LPR 1-14 Preliminary Claim Constructions and Extrinsic Evidence
Ex. 1006	U.S. Patent No. 9,494,379
Ex. 1007	U.S. Patent App. Pub. No. 2012/0125302 (“Stanziale ‘302”)
Ex. 1008	U.S. Patent No. 7,708,001 (“Kempf ‘001”)
Ex. 1009	U.S. Patent App. Pub. No. 2012/0312287 (“Park”)
Ex. 1010	U.S. Patent No. 7,578,289 (“Norkus”)
Ex. 1011	WIPO Int’l Pub. No. WO 2011/158062 (“Stanziale ‘062”)
Ex. 1012	WIPO Int’l Pub. No. WO 2011/141771 (“Stanziale ‘771”)
Ex. 1013	U.S. Patent App. Pub. No. 2011/0030666 (“Darlington”)
Ex. 1014	U.S. Patent No. 7,836,871 (“Kempf ‘871”)
Ex. 1015	U.S. Patent App. Pub. No. 2011/0308508 (“Islas”)
Ex. 1016	Declaration of Stephen A. Batzer, Ph.D.
Ex. 1017	United States District Courts - National Judicial Caseload Profile (Reporting Period Ending June 30, 2022)

Ex. 1018	U.S. Patent No. 6,474,324 (“Despart”)
Ex. 1019	U.S. Patent No. 5,024,206 (“Lester”)
Ex. 1020	Curriculum vitae of Stephen A. Batzer, Ph.D., P.E.
Ex. 1021	Defendant’s Motion to Stay Claim Construction
Ex. 1022	Case Management Conference Scheduling Order, <i>Ravin Crossbows, LLC v. Hunter’s Mfg. Co., Inc. d/b/a TenPoint Crossbow Technologies</i> , No. 5:23-cv-00598-SL (N.D. Ohio Apr. 12, 2023)
Ex. 1023	Defendant’s Motion to Stay Case and Motion to Postpone Case Management Conference (without accompanying exhibits), <i>Ravin Crossbows, LLC v. Hunter’s Mfg. Co., Inc. d/b/a TenPoint Crossbow Technologies</i> , No. 5:23-cv-00598-SL (ECF No. 86)
Ex. 1024	Defendant’s Reply in Support of its Motion to Stay Case and Motion to Postpone Case Management Conference (without accompanying exhibits), <i>Ravin Crossbows, LLC v. Hunter’s Mfg. Co., Inc. d/b/a TenPoint Crossbow Technologies</i> , No. 5:23-cv-00598-SL (ECF No. 90)
Ex. 1025	Order continuing Case Management Conference, <i>Ravin Crossbows, LLC v. Hunter’s Mfg. Co., Inc. d/b/a TenPoint Crossbow Technologies</i> , No. 5:23-cv-00598-SL (May 18, 2023)
Ex. 1026	United States District Courts - National Judicial Caseload Profile (Reporting Period Ending March 31, 2023) – N.D. Ohio excerpt

CERTIFICATE OF SERVICE

I hereby certify that, on the date indicated below, I served the foregoing

Reply, along with the cited supporting exhibits, via e-mail on:

Christopher M. King (cking@foley.com)
Kadie M. Jelenchick (kjelenchick@foley.com)
Michelle A. Moran (mmoran@foley.com)

Date: June 10, 2023

/Sergey Vernyuk/
Sergey Vernyuk, USPTO Reg. No. 71,283
Emerson, Thomson & Bennett, LLC
1914 Akron-Peninsula Road
Akron, Ohio 44313
330-434-9999
sv@etblaw.com
Backup Counsel for Petitioner