

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.

IPR2023-00407
Patent 9,354,015

PATENT OWNER'S SUR-REPLY
TO PETITIONER'S REPLY TO
PATENT OWNER'S PRELIMINARY RESPONSE

TABLE OF CONTENTS

I.	THE BOARD SHOULD DISCRETIONARILY DENY INSTITUTION UNDER 35 U.S.C § 314(a)	1
A.	<i>Fintiv</i> Factor 1 – Likelihood of a Stay	1
B.	<i>Fintiv</i> Factor 2 – Proximity of Trial Date to Deadline for Final Written Decision.....	3
C.	<i>Fintiv</i> Factor 3 – Investment in Parallel Proceeding.....	4

TABLE OF EXHIBITS

Exhibit No.	Exhibit
2001	Declaration in Support of Motion for <i>Pro Hac Vice</i> Admission of Kadie M. Jelenchick
2002	Declaration in Support of Motion for <i>Pro Hac Vice</i> Admission of Michelle A. Moran
2003	Scheduling Order, <i>Ravin Crossbows, LLC v. Hunter's Mfg. Co., Inc.</i> , Case No. 2:21-cv-02213-GMN-EJY, Dkt. 36 (D. Nev.)
2004	Case Transfer Confirmation, <i>Ravin Crossbows, LLC v. Hunter's Mfg. Co., Inc.</i> , Case No. 2:21-cv-02213-GMN-EJY, Dkt. 77 (D. Nev.)
2005	Animation of Figure 12 of U.S. Patent No. 9,354,015
2006	Joint Claim Construction Chart, <i>Ravin Crossbows, LLC v. Hunter's Mfg. Co., Inc.</i> , Case No. 2:21-cv-02213-GMN-EJY, Dkt. 47-1 (D. Nev.)
2007	Complaint, <i>Ravin Crossbows, LLC v. Hunter's Mfg. Co., Inc.</i> , Case No. 2:21-cv-02213-GMN-EJY, Dkt. 1 (D. Nev.)
2008	Patent Owner's Supplemental Rule 26(a) Disclosures served March 10, 2023, <i>Ravin Crossbows, LLC v. Hunter's Mfg. Co., Inc.</i> , Case No. 2:21-cv-02213-GMN-EJY (D. Nev.)
2009	Patent Owner's Amended and Supplemental Infringement Contentions served February 3, 2023, <i>Ravin Crossbows, LLC v. Hunter's Mfg. Co., Inc.</i> , Case No. 2:21-cv-02213-GMN-EJY (D. Nev.)

Exhibit No.	Exhibit
2010	Excerpt from U.S. District Courts – National Judicial Caseload Profile, through December 2022, including time to trial statistics for Northern District of Ohio (also available at https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile1231.2022.pdf)
2011	Time to Trial Statistics for the Northern District of Ohio, LexMachina.com
2012	Patent Owner's Preliminary Infringement Contentions served May 23, 2022, <i>Ravin Crossbows, LLC v. Hunter's Mfg. Co., Inc.</i> , Case No. 2:21-cv-02213-GMN-EJY (D. Nev.)
2013	Petitioner's Initial Invalidity Contentions served July 7, 2022, <i>Ravin Crossbows, LLC v. Hunter's Mfg. Co., Inc.</i> , Case No. 2:21-cv-02213-GMN-EJY (D. Nev.)
2014	Redacted Patent Owner's Opposition to Petitioner's Motion to Stay Case filed May 19, 2023, <i>Ravin Crossbows, LLC v. Hunter's Mfg. Co., Inc.</i> , Case No. 5:23-cv-00598, Dkt. 88 (N.D. Ohio)
2015	Patent Owner's Motion for Leave to File Sur-Reply, filed May 31, 2023, <i>Ravin Crossbows, LLC v. Hunter's Mfg. Co., Inc.</i> , Case No. 5:23-cv-00598, Dkt. 92 (N.D. Ohio)
2016	Patent Owner's Sur-Reply, filed May 31, 2023, <i>Ravin Crossbows, LLC v. Hunter's Mfg. Co., Inc.</i> , Case No. 5:23-cv-00598, Dkt. 92-1 (N.D. Ohio)
2017	Case Management Notice, filed April 11, 2023, <i>Ravin Crossbows, LLC v. Hunter's Mfg. Co., Inc.</i> , Case No. 5:23-cv-00598, Dkt. 83 (N.D. Ohio)
2018	Draft Joint Report of Parties' Planning Meeting for Case Management Conference, dated May 17, 2023

Exhibit No.	Exhibit
2019	Order Denying Defendant's Motion to Defer Deadline for Responsive Pleading, <i>Ravin Crossbows, LLC v. Hunter's Mfg. Co., Inc.</i> , Case No. 2:21-cv-02213-GMN-EJY, Dkt. 30 (D. Nev. May 31, 2022)
2020	Scheduling Order, <i>Ravin Crossbows, LLC v. Hunter's Mfg. Co., Inc.</i> , Case No. 2:21-cv-02213-GMN-EJY, Dkt.36 (D. Nev.)

Pursuant to the Board's Order, Ravin Crossbows, LLC ("Patent Owner") submits its Sur-Reply "limited to the subjects raised by Petitioner in the Reply brief." Paper 10, 3. Accordingly, Patent Owner addresses Petitioner's discussion of *Fintiv* factors 1, 2, and 3 in view of Petitioner's May 5, 2023 Motion to Stay in the related District Court litigation, the Court's postponement of the jointly requested case management conference ("CMC") in view of the unfinished briefing on Petitioner's newly filed Motion to Stay, and updated district court statistics for the Northern District of Ohio. None of these developments substantively alters the *Fintiv* analysis set forth in Patent Owner's Preliminary Response ("POPR"). *See* POPR, 57-70. Even considering these Petitioner-fueled "developments," the Board should discretionarily deny institution under 35 U.S.C. §314(a).

I. THE BOARD SHOULD DISCRETIONARILY DENY INSTITUTION UNDER 35 U.S.C § 314(a)

A. *Fintiv* Factor 1 – Likelihood of a Stay

Seeking to backfill its deficient, one-sentence analysis of *Fintiv* factor one in its Petition (Petition, 5), Petitioner seeks to get into the record its recently filed Motion to Stay (EX1023) and Reply (EX1024). As set forth in the POPR and Patent Owner's Opposition to Motion to Stay (EX2014) the three-factor test applied in the Northern District of Ohio weighs against a stay. The parties are direct competitors, leaving Patent Owner unduly prejudiced by a stay. POPR, 60; EX2014, 5-11. There

is limited opportunity for simplification of the issues in the district court litigation because Petitioner made the strategic decision to challenge a single claim out of 103 asserted claims from only one of the six asserted patents. POPR, 60-61; EX2014, 11-14. And, finally, as much as Petitioner would like the Board to have the impression that this case has been static for much of the past 18 months, the case has substantially progressed and the parties and the Nevada and Ohio Courts have expended significant resources. POPR, 61-62, EX2014, 14-16.

Petitioner offers no evidence that the District Court is likely to stay the litigation in the specific circumstances present in the litigation. Nor is the Court's postponement of the May 25, 2023 CMC indicative of a likelihood of a stay, particularly when viewed in the full context of the events leading to the District Court's *sua sponte* decision to continue the CMC.

Petitioner was not expeditious in filing its Motion to Stay. Petitioner waited four and a half months after filing its Petition to spring the Motion to Stay on Patent Owner and the Court on May 5, 2023. This followed the Petitioner using the full one-year window after filing of the suit in Nevada to file its Petition. The May 5 filing of the Motion to Stay itself came after Petitioner waited nearly two months from the case being transferred to the Northern District of Ohio and over three weeks after Petitioner represented to the District Court that it "believe[d] that the action is ripe for an in-person Case Management Conference." EX2017. With Petitioner's

Motion to Stay now filed on May 5, 2023, briefing would not be complete until May 26, 2023, the day *after* the CMC. In fact, while Patent Owner timely opposed the Motion, (EX2014), the Motion to Stay is not yet fully joined as Patent Owner requested leave to file a sur-reply on May 31, 2023, to address Petitioner's newly raised arguments in reply. EX2015; EX2016. As a result, in view of Petitioner's maneuvering, the District Court was left without "sufficient time to consider the motion" – the reason the District Court postponed the CMC. *See* EX1025.

B. *Fintiv* Factor 2 – Proximity of Trial Date to Deadline for Final Written Decision

Petitioner's three-month update to the time-to-trial statistics is irrelevant. First, even with the additional three months of data, Petitioner continues to rely on outlier statistics and fails to acknowledge that cases in the District Court typically proceed to trial far faster. *See* POPR, 63 n.4. These "updated" statistics are not representative of the broader trends seen in the District Court in question. *See id.*, 63.

Moreover, as Petitioner acknowledges (Reply, 4), the District Court recommended this case be assigned to the "Complex Track." Under Northern District of Ohio Local Rule 16.2(a), Complex Track cases "should have a case completion goal of no more than twenty-four (24) months." *See* EX1022; N.D. Ohio LR 16.2(a)(2)(C). Accordingly, during preparation for the CMC, Patent Owner

proposed a target date for trial in or around January 2024 (*see* EX2018, 20), which is more than 24 months after Patent Owner filed its Complaint. This is nearly six months before the Board would be required to issue any Final Written Decision. *See* POPR, 63. Petitioner offers no evidence that the District Court will simply start the case all over as it suggests.

Fintiv factor two still weighs in favor of denial.

C. *Fintiv* Factor 3 – Investment in Parallel Proceeding

Petitioner's inclusion of *Fintiv* factor three appears to be beyond the subjects presented to the Board during the June 7, 2023 hearing in contravention of the Board's Order. Paper 10, 2. Nevertheless, Patent Owner addresses Petitioner's Reply in the event the Board considers this new argument.

The Nevada Court did more than “merely rule on TenPoint's Motion to Transfer.” Reply, 5. In addition to that ruling, the Nevada Court denied Petitioner's Motion to Defer Deadline for Responsive Pleading and required Petitioner to file its response to the Complaint by April 14, 2023. EX2019, 3. As a result, under local rules, the parties were required to confer pursuant to Fed. R. Civ. P. 26(f) within 30 days of Petitioner's answer and to prepare a proposed scheduling and discovery order within 14 days of the parties' Rule 26(f) conference. D. Nev. LR 26-1(a). The Nevada Court then entered its Scheduling Order on the parties' disputed proposed scheduling and discovery order with dates certain for contention disclosures, claim

construction briefing, fact and expert discovery deadlines, and deadlines for dispositive motions. EX2020. Thus, until the case was transferred on the eve of the deadline for opening expert reports, the case progressed through claim construction briefing and discovery consistent with the deadlines in the Scheduling Order, despite Petitioner's many attempts to stall the litigation.

Further, now that the dispute has been transferred from Petitioner's state of incorporation to its preferred venue predicated on professed convenience, the Ohio Court has similarly started to make investments in this matter. Petitioner, by filing its Motion to Stay, has now required the Ohio Court to "take sufficient time to consider the motion." EX1025.

Fintiv factor three weighs in favor of denying institution. POPR, 64-65.

* * * * *

For the foregoing reasons, and the reasons set forth in the POPR, the Board should discretionarily deny institution under U.S.C. §314(a). *See* POPR at 57-70.

Dated: June 16, 2023

Respectfully submitted,

/Christopher M King/
Christopher M. King
Registration No. 71,128
Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE** was served on June 16, 2023, by email to Petitioner's counsel of record:

jms@etblaw.com

sv@etblaw.com

Dated: June 16, 2023

/Christopher M. King/
Christopher M. King
Registration No. 71,128
Counsel for Patent Owner