

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 MOTION TO
SUBMIT SUPPLEMENTAL INFORMATION

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

On July 10, 2023, the Board instituted the requested IPR of U.S. Patent No. 9,354,015 (the “’015 Patent,” Ex. 1001). (“Dec.,” Paper 13.) The Board encouraged further development of one claim-construction issue (“mounted to”). (*Id.* at 12.) Also, the Board was not persuaded (in light of Patent Owner’s arguments) that the prior art asserted in Grounds 1-4 (and perhaps 6) sufficiently disclosed power cables being displaced “away from” the respective planes of rotation. (*Id.* at 16-18, 21-22, 26.) On Grounds 9-11, the Board was not persuaded (again, due to Patent Owner’s arguments) that one of the asserted prior art references (U.S. Patent No. 7,836,871, “Kempf ‘871”) sufficiently disclosed a “second draw string journal” and a “second” “power cable take-up journal.” (*Id.* at 35-36.)

Petitioner wishes to take the Board up on its invitation and submit supplemental information on the claim construction issue. Additionally, Petitioner believes that Patent Owner’s arguments regarding cables displacing “away from” the planes of rotation and the alleged absence of journals on Kempf ‘871’s cam are misleading, so Petitioner wishes to submit supplemental information to further develop these points. The Board authorized filing this motion. (Paper 18.)

I. APPLICABLE STANDARD

A motion to submit supplemental information requires (1) requesting authorization to file the motion within one month of the IPR institution, and (2) the information to be relevant to a claim for which the IPR has been instituted. 37 C.F.R.

§ 42.123(a). A further guiding principle is to “ensure efficient administration of the Office and the ability of the Office to complete IPR proceedings in a timely manner.” *Redline Detection, LLC v. Star Envirotech, Inc.*, 811 F.3d 435, 445 (Fed. Cir. 2015). “The introduction of new evidence in the course of the PTAB trial is to be expected in *inter partes* review trial proceedings and, as long as the opposing party is given notice of the evidence and an opportunity to respond to it, the introduction of such evidence is perfectly permissible under the [Administrative Procedure Act].” *Telefonaktiebolaget LM Ericsson v. TCL Corp.*, 941 F.3d 1341, 1345-46 (Fed. Cir. 2019) (cleaned up) (holding that a declaration was properly admitted as supplemental information because it was “reasonably viewed as material, and the opponent has adequate opportunity to respond and to produce contrary evidence”).

II. DISCUSSION

Petitioner requested authorization to file this motion within one month of institution. Patent Owner intends to depose Dr. Batzer on August 24, 2023 (*see* Paper 17), so it will be able to examine him on his supplemental declaration. Patent Owner’s Response is not due until October 2, 2023 (Paper 15, 11), so it will have plenty of time to respond to the supplemental information, which will not adversely affect the Board’s ability to timely complete the IPR or hinder its efficient administration. This motion satisfies the timing, notice, and efficiency requirements. Petitioner thus turns to the relevance requirement, which is also readily satisfied.

A. The Supplemental Information Shows that Petitioner’s Proposed Construction of “Mounted To” Is Correct.

The best evidence for construing a patent claim term is the patent’s intrinsic evidence, which includes related patent applications in the same patent family. *E.I. du Pont de Nemours & Co. v. Unifrax I LLC*, 921 F.3d 1060, 1068-70 (Fed. Cir. 2019). Unless otherwise compelled, the same claim term in related patents carries the same construed meaning. *In re Rambus Inc.*, 694 F.3d 42, 48 (Fed. Cir. 2012).

U.S. Patent Nos. 9,879,936 (the “’936 Patent,” Ex. 1027) and 10,254,073 (the “’073 Patent,” Ex. 1028) claim the benefit of the ‘015 Patent under 35 U.S.C. § 120. Claim 9 of the ‘936 Patent recites “mounted to” with an offset requirement, which the specification discloses as being accomplished by not mounting the cams directly to the limbs but indirectly through axle mounts. (Ex. 1027, 9:63-10:13, Fig. 14A.) Claim 1 of the ‘073 Patent recites that the first and second string guides are each “mounted to the [respective] flexible limb by a [respective] axle mount and rotatable around a [respective] axis located a fixed distance from the [respective] flexible limb by the [respective] axle mount.” These statements confirm that this patent family’s references to the string guides being “mounted to” the limbs are not limited to direct mounting but also include mounting through intervening components. Also, the ‘073 Patent discloses “a center rail 402 with a riser 404 mounted at the distal end,” an “arrow rest 750 [] mounted to distal end 776 of the center rail,” and “an optical scope mounted to a scope mount.” (Ex. 1028, 9:10-11, 18:5-6, claim 31.) There is

no indication that *any* of these mounted components must rotate (but only about one fixed axis). Petitioner thus moves to submit these patents and Dr. Batzer's supplemental declaration (*see* Ex. 1029, ¶¶ 7-17), to address this issue.

B. The Supplemental Information Confirms that the Allegedly Missing Journals Necessarily Exist in Kempf '871.

What a prior art reference teaches is evaluated from the perspective of a person of ordinary skill in the art ("POSA"). *See Sundance, Inc. v. Demonte Fabricating Ltd.*, 550 F.3d 1356, 1364 (Fed. Cir. 2008); *Blackbird Tech. v. Fitbit, Inc.*, 825 F. App'x 742, 745 (Fed. Cir. 2020). Patent Owner's argument here hangs on the lack of an express callout number and arrow to the cam's outer track (receiving the bowstring 48) and to the cam's inner track (receiving the cable 44) in Kempf '871. But just because these callout numbers and arrows are missing from the figures (in contrast to those shown for the pulley 28) does not mean that the underlying structural features are actually absent from the cam. A POSA would understand that a draw string journal is necessarily required in order to receive the bowstring 48 and that a power cable journal is necessarily required in order to receive the power cable 44. The cam close-up in Fig. 3 of Kempf '871 further shows the (unlabeled) outer track or journal where the string 48 is received, as well as the dashed (unlabeled) inner track or journal for the cable 44. Petitioner thus moves to submit Dr. Batzer's supplemental declaration to address these points (*see* Ex. 1029, ¶¶ 18-39), which are directly relevant to claim 1.

C. The Supplemental Information Confirms that the Three Stanziale References Adequately Support the “Away From” Limitation.

All three Stanziale references (U.S. Patent App. Pub. No. 2012/0125302, “Stanziale ‘302”; WIPO Int’l Pub. No. WO 2011/158062, “Stanziale ‘062”; WIPO Int’l Pub. No. WO 2011/141771, “Stanziale ‘771”), disclose helical power cable journals that, due to the helical nature, must coil the received cables one turn adjacent another along the rotation axis. They also disclose draw string journals that form respective planes of rotation, which are perpendicular to the same rotation axis, because the draw string journals and power cable journals share a common rotation axis. So because (1) the helical nature of the power cable journals requires the received power cables to extend along the rotation axis, and (2) the rotation axis is common to the power cable journals and the draw string journals that form the planes of rotation, then (3) the power cables must, of necessity, be displaced (as the crossbow is drawn) in relation to the planes of rotation (i.e., the design need); the only remaining question is the direction of displacement. But even here, there are only two possible options (by virtue of being constrained to wind around a common axis): toward the planes of rotation, or away therefrom. With just two options available and one of them required to be chosen (i.e., the required predicates established), a POSA would find it obvious to try each. Petitioner thus moves to submit Dr. Batzer’s supplemental declaration to further confirm how the three Stanziale references meet this limitation of claim 1. (*See* Ex. 1029, ¶¶ 40-59.)

Date: August 18, 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
Ex. 1027	U.S. Patent No. 9,879,936 (the “’936 Patent”)
Ex. 1028	U.S. Patent No. 10,254,073 (the “’073 Patent”)
Ex. 1029	Supplemental Declaration of Stephen A. Batzer, Ph.D.

CERTIFICATE OF SERVICE

I hereby certify that, on the date indicated below, I served the foregoing
Motion, with Exs. 1027-1029, via e-mail on:

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

Date: August 18, 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