

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 RESPONSE
TO PETITIONER'S MOTION TO SUBMIT SUPPLEMENTAL INFORMATION

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.)

The Board should deny Petitioner's Motion to Submit Supplemental Information (Paper 19) ("Motion"), which is being offered to refine and bolster arguments Petitioner could have raised in its Petition. Because the Supplemental Information is purely responsive to the POPR and the Institution Decision, this is an improper application of 37 C.F.R. § 42.123(a).

"It is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify 'with particularity' the 'evidence that supports the grounds for the challenge to each claim.'" *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (quoting 35 U.S.C. § 312(a)(3)). "Unlike district court litigation—where parties have greater freedom to revise and develop their arguments over time and in response to newly discovered material—the expedited nature of IPRs bring[s]...an obligation for petitioners to make their case in their petition to institute." *Id.* These are "strict...requirements of which petitioners are aware when they seek to institute an IPR." *Id.*; *see also* 37 C.F.R. § 42.104(b)(4). Accordingly, adhering to the mandate of PTAB's regulations, panels routinely disallow new declarations offered as "supplemental information." *Am. Well Corp. v. TelaDocHealth, Inc.*, IPR2021-00748, Paper 23 at 6-7 (PTAB Feb. 28, 2022) ("*Am. Well*") ("[T]he Board has denied such motions where the petitioner sought to use the supplemental information

to refine or bolster challenges originally presented in the petition, based on information in the preliminary response or institution decision.”) (gathering cases).

A. Petitioner's Supplemental Information Improperly Seeks to Respond to the POPR and the Institution Decision

Petitioner's Supplemental Information attempts to create an opportunity to bolster its position. *Ooma, Inc. v. Deep Green Wireless LLC*, IPR2017-01541, Paper 14, 3-4 (Jan. 23, 2018) (“*Ooma*”) (“Supplemental information is not intended to provide a petitioner an advantageous ‘wait-and-see’ opportunity to use a patent owner's preliminary response and our decision on institution in order to refine or bolster petitioner's position.”). As Petitioner admits, the impetus for its Motion is to respond to the POPR and the Institution Decision, in particular where the Board was persuaded by Patent Owner's arguments rather than Petitioner's position:

The Board encouraged further development of one claim construction issue (“mounted to”). ([Institution Decision, Paper 13] at 12.) [And that] 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.* 35-36.)

Motion at 1.

Where a petitioner “seeks to provide arguments via the supplemental declaration for issues addressed by Patent Owner in its Preliminary Response or by [the Board] in the Decision on Institution,” the Board “views [the supplemental declaration] as unwarranted.” *Triller, Inc. v. TikTok Pte.*, IPR2022-00180, Paper 18, 4 (Aug. 25, 2022) (“*Triller*”). Because this is exactly what Petitioner seeks to do here, the Supplemental Information is unwarranted and should be disallowed. *Id.* at 6; *see also Am. Well* at 17; *Ooma* at 3-4; *Merck Sharp & Dohme Corp. v. Microspherix LLC*, IPR2018-00393, Paper 21 at 3 (PTAB Sept. 10, 2018) (“The provision for submitting supplemental information is not intended to offer a petitioner a routine avenue for bolstering deficiencies in a petition raised by a patent owner in a preliminary response.”); *Pac. Mkt. Int’l, LLC v. Ignite USA, LLC*, IPR2014-00561, Paper 23 at 3 (PTAB Dec. 2, 2014) (“[A] petitioner should not expect § 42.123 to present a ‘wait-and-see’ opportunity to supplement a petition after initial comments or arguments have been laid out by a patent owner”).

B. Petitioner Fails to Meet Its Burden

Petitioner lacks the necessary good cause to support its Motion. As a threshold matter, Petitioner’s sole citation purporting to underscore the propriety of its Motion

is inapposite. Motion at 2. In *Telefonaktiebolaget LM Ericsson v. TCL Corp.*, 941 F.3d 1341, 1345-46 (Fed. Cir. 2019), the declaration at issue was directed to the (un)availability of a prior art reference in a German library. Petitioner in *TCL* was unable to submit a proper declaration at the time it filed its petition because it was unable to find a declarant with personal knowledge who would “sign a sworn declaration and [be] willing to travel to the U.S. to be deposed.” *Id.* at 1345. Here, Petitioner offers no such explanation why it was unable to submit the Supplemental Information with its Petition. *See* Motion. Nor could it, as explained below.

Second, the Supplemental Information consists of claim construction arguments predicated on related patents that were readily available long before Petitioner filed its Petition on December 21, 2022—the '936 Patent (Ex. 1027) granted on January 30, 2018; the '073 Patent (Ex. 1028) granted on April 9, 2019. Petitioner's reliance on the Board's “invitation” to “further develop[] one claim-construction issue (‘mounted to’)” is unpersuasive. While the Institution Decision “encourage[d] the parties to do so in subsequent briefing,” that is not an invitation to interrupt the normal briefing process. *See Triller*, at 6 (“[T]hese statements (in the institution decision) are directed at the normal briefing process, and do not justify allowing supplemental information.”). Petitioner says nothing on this point.

Finally, Petitioner fails to establish good cause as to why it should be allowed to submit an additional 29-page expert declaration to backfill deficiencies in the

Petition and rehabilitate Dr. Batzer's original expert declaration on prior art that was the bases for multiple grounds in the Petition. Merely addressing the procedural standard for a motion to submit supplemental information is insufficient. *Triller* at 1-2. This does not mean the Board "must grant the motion." *Id.* at 3. "Rather, timeliness and relevancy provide additional requirements that must be construed within the overarching context of the PTAB's regulations governing IPR and general trial proceedings." *Id.* at 3-4 (citing *Redline Detection, LLC v. Star Envirotech, Inc.*, 811 F.3d 435, 446 (Fed. Cir. 2015)). Indeed, the Board must "consider how supplemental information fits within the context of *inter partes* reviews." *Triller* at 4. As in *Triller*, in the present circumstances, the Motion should be denied. *See id.* at 4-5.

There is currently no paper of record that cites to Dr. Batzer's supplemental declaration, and it is unclear how Petitioner plans to rely on it. *See id.* And, Petitioner does not explain how cross-examining Dr. Batzer on his original and proffered supplemental declaration now decreases the number of depositions overall. *See id.* Petitioner has provided no assurances that it will not submit additional declaration testimony from Dr. Batzer (or another expert) with its Petitioner's Reply, necessitating yet another deposition. *See id.* Whether Patent Owner may have the opportunity to provide testimony from its own expert in response is not a sufficient reason for allowing the supplemental declaration of Dr. Batzer now. *See id.* at 5.

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Patent Owner's Response to Petitioner's
Motion to Submit Supplemental Information

Dated: August 22, 2023

Respectfully submitted,

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Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PATENT OWNER'S RESPONSE TO PETITIONER'S MOTION TO SUBMIT SUPPLEMENTAL INFORMATION** was served on August 22, 2023, by email to
Petitioner's counsel of record:

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Dated: August 22, 2023

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