

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 MOTION
FOR ROUTINE DISCOVERY

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.)
2021	<i>Reserved</i>
2022	<i>Reserved</i>
2023	<i>Reserved</i>
2024	<i>Reserved</i>
2025	July 25, 2023 Email String Between Counsel
2026	August 23, 2023 Email String Between Counsel
2027	Excerpts from the Transcript of the August 24, 2023 Deposition of Stephen A. Batzer
2028	August 24, 2023 Email String Between Counsel

I. Introduction and Relief Requested

Patent Owner Ravin Crossbows, LLC (“Patent Owner”) respectfully requests that the Board compel Petitioner Hunter’s Manufacturing Company, Inc. (“Petitioner”) to produce its purported expert – Stephen Batzer – so that Patent Owner may complete the routine discovery pursuant to 37 C.F.R. §42.51(b)(1) to which it is entitled. In favor of another deposition in an unrelated proceeding, Petitioner’s counsel unilaterally terminated Mr. Batzer’s deposition before Patent Owner completed its full seven (7) hour cross-examination under 37 C.F.R. §42.53(c)(2). The Board authorized this Motion on August 29, 2023. Paper 21.

II. Factual Background

On December 21, 2022, Petitioner filed a Petition for *Inter Partes* Review of Claim 1 of U.S. Patent No. 9,354,015 (“Petition,” Paper 1). The Petition relied heavily on the Declaration of Stephen A. Batzer, Ph.D. (Ex. 1016) to support its grounds. *See generally* Paper 1. On August 9, 2023, Patent Owner served and filed a Notice of Deposition for Mr. Batzer, which stated that Patent Owner “shall take the deposition of Stephen A. Batzer, Ph.D., P.E., commencing August 24, 2023, at 9:00 a.m. *until completed*” and noted that “the parties have conferred and have agreed on this date and location for Mr. Batzer’s deposition.” Paper 17 (emphasis added). Petitioner’s counsel selected the date and location of Mr. Batzer’s deposition. EX2025. Although counsel for Patent Owner offered to conduct Mr.

Batzer's deposition in Traverse City, Michigan, where Mr. Batzer lives, Petitioner elected for the deposition to proceed in Akron, Ohio, which required travel for everyone except Petitioner's counsel. *Id.* The Deposition Notice therefore noticed the deposition for Akron at the offices of Roetzel & Andress. Paper 17. Roetzel & Andress are not counsel in this IPR proceeding.

On the morning of August 23, 2023 – less than 24 hours before the noticed deposition was scheduled to begin at a third-party location and after arrangements had been made for the attendance of a court reporter and videographer beginning at 9:00 a.m. – counsel for Petitioner emailed counsel for Patent Owner informing Patent Owner that Mr. Batzer “has a hard stop at 4:30 because he has a flight out at 6:00 p.m.” EX2026. Patent Owner responded that the Notice for Mr. Batzer's deposition was for 9:00 a.m., which was when the court reporter was arriving, and that counsel would “try our best to accommodate the witness'[s] travel schedule.” *Id.* At no point did Patent Owner agree to conclude the deposition at 4:30 p.m. or otherwise stipulate to shorten the time permitted for Mr. Batzer's cross-examination.

Mr. Batzer's deposition began shortly after 9:00 a.m. on August 24, 2023. By 4:30 p.m., after limited breaks and a shortened lunch hour, Patent Owner had cross-examined Mr. Batzer for approximately six (6) hours. Despite the fact that the cross-examination had not yet concluded, and over Patent Owner's objection, Mr. Batzer abruptly left to accommodate another in-person deposition in an unrelated matter in

his home forum. EX2027 at 231:14-23; EX2028.

Petitioner's counsel refused to continue the deposition or otherwise make Mr. Batzer available to complete the deposition at a later date. EX2027 at 231:16-234:17. Petitioner maintained its refusal to allow Patent Owner to complete its cross-examination of Mr. Batzer even when Patent Owner offered to complete the approximately one (1) hour remaining of Mr. Batzer's cross-examination via Zoom (or similar platform). EX2028. Patent Owner attempted to discuss continuing Mr. Batzer's cross-examination again on August 25, 2023, but Petitioner's counsel stated that there was no change in Petitioner's position as stated in the deposition transcript.

III. The Requested Discovery Is Routine and In the Interests of Justice

Discovery in *inter partes* review proceedings is limited to that expressly permitted by regulation and such additional discovery as the Board may authorize upon motion of a party and a showing that such additional discovery would be in the interests of justice. 35 U.S.C. §316(a)(5); 37 C.F.R. §42.51(b). The parties are, however, required to permit their opponents to engage in "routine discovery," which expressly includes the "[c]ross-examination of affidavit testimony prepared for the proceeding...." 37 C.F.R. §42.51(b)(ii). The Board's regulations further provide that the opposing party is entitled to "[s]even hours for cross-examination." 37 C.F.R. §42.53(c)(2).

"As a guiding principle of routine discovery, as defined by [the Board's] rules,

if a party proffers a witness's testimony, that party must make that witness available for cross-examination by the other party." *Vudu, Inc. v. Ideahub, Inc.*, IPR2020-01688, Paper 47, 7 (PTAB Mar. 16, 2022) (citing 37 C.F.R. §§42.51-42.53); *see also* Patent Trial and Appeal Board Consolidated Trial Practice Guide at 23 (November 2019) (explaining that routine discovery "places the parties on a level playing field and streamlines the proceeding.... Thus, a party presenting a witness's testimony by affidavit should arrange to make the witness available for cross-examination. This applies to witnesses employed by a party as well as experts and non-party witnesses."). Here, Petitioner has refused to meet its obligations for routine discovery, instead seeking to limit its purported expert's availability for deposition and prevent Patent Owner from fully vetting the veracity of Mr. Batzer's purported expert testimony. This is wholly improper. Patent Owner is aware of no authority that allows the proponent of a declarant's testimony to unilaterally limit the amount of time its opponent may have for cross-examination to less than the seven (7) hours authorized by the Board's regulations. There certainly is no authority to support the proposition that the proponent may do so without making reasonable accommodations to allow the cross-examining party to complete its deposition when the disruption was caused solely by the declarant's self-imposed (and untimely disclosed) travel requirements and when the proponent chose the date and location for the deposition in the first instance.

The importance of adequate cross-examination has long been recognized by the Board. Indeed, where a party refuses to make a declarant available for deposition, the Board routinely gives little to no weight to the declarant's direct testimony or has even stricken the declaration entirely. *See, e.g., Vudu*, Paper 47 at 10-11 ("Where a third party has submitted a declaration and has either refused or otherwise has not been made available to be cross examined, we have historically given little weight to or stricken the third party's declaration.") (collecting cases). The reason for this is simple. Preventing such routine discovery, particularly when it relates to questioning the declarant on such dispositive issues as the teachings of the prior art, would "significantly prejudice" the opposing party and "significantly impact [its] ability to address a dispositive issue" in the IPR. *Id.* at 11.

Patent Owner has partially deposed Mr. Batzer, but the unilateral decision by Petitioner's counsel to end the deposition prematurely has robbed Patent Owner of a full opportunity to question Mr. Batzer about the entirety of his direct testimony. Portions of his declaration had not yet been discussed, including entire sections related to prior art that Petitioner relies on as primary references. Many of the underlying facts may prove dispositive for one or more of the twelve grounds presented in the Petition. Thus, Patent Owner must be allowed to complete its deposition – with minimal interruptions from Petitioner's counsel – or it will face substantial prejudice.

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Patent Owner's Motion
for Routine Discovery

Dated: September 5, 2023

Respectfully submitted,

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

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Patent Owner's Motion
for Routine Discovery

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PATENT OWNER'S MOTION FOR ROUTINE DISCOVERY** was served on September 5, 2023, by email to Petitioner's counsel of record:

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Dated: September 5, 2023

/Christopher M. King/
Christopher M. King
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