

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 RESPONSE TO
PATENT OWNER'S MOTION FOR ROUTINE DISCOVERY

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

Petitioner Hunter's Manufacturing Company, Inc. d/b/a TenPoint Crossbow Technologies responds to Patent Owner Ravin Crossbows, LLC's Motion for Routine Discovery (Paper 22) and respectfully requests that the Board deny it.

I. Background Facts

Shortly after institution of this IPR, Patent Owner contacted Petitioner, seeking a deposition of Dr. Batzer. (*See* Ex. 2025, 2. Patent Owner failed to include an exhibit label and page numbering as required by 37 C.F.R. § 42.63(d) for any of the exhibits accompanying the Motion, so Petitioner cites to the PDF page numbers.) Patent Owner sought availability “during the week of August 24 [which was a Thursday] and September 4,” which was Labor Day. (Ex. 2025, 2.) Petitioner responded and indicated that either August 24 or 25 were available. (*Id.* at 1.) Patent Owner then chose August 24, starting at 9:00 a.m. (Paper 17, 2.)

Petitioner informed Patent Owner on the morning of August 23 that Dr. Batzer would need to leave the deposition at 4:30 p.m. (Ex. 2026, 1.) Though 4:30 p.m. is more than seven hours after the 9:00 a.m. start, Petitioner still suggested that the parties start the deposition earlier to ensure that it would be completed. Patent Owner promptly declined, relying on the court reporter's scheduled arrival. (*Id.*) However, Patent Owner did not indicate whether it even asked the reporter, who is local, to start early. Instead, Patent Owner promised to “try our best to accommodate the witness'[s] travel schedule.” (*Id.*)

The deposition started on time, approximately 9:04 a.m. (Ex. 1030, 4:9.) After a break early in the deposition, Petitioner repeated Dr. Batzer’s hard stop, and Patent Owner said nothing in response. (*See id.* at 59:19-60:25.) The deposition continued with several breaks until Dr. Batzer’s 4:30 p.m. hard stop. (*See id.* at 231:14-15.) Importantly, *each* of the breaks (with one exception to change the media by the Patent Owner’s requested videographer) was initiated by Patent Owner. (*See id.* at 8:1-3, 59:14-19, 122:11-17, 172:19-24, 224:17-20.)

At approximately 4:15 p.m. – just 15 minutes to Dr. Batzer’s hard stop – Patent Owner for the very first time raised the issue of continuing the deposition because it needed more time. (*See id.* at 232:11-234:10.)

II. The Motion Should Be Denied.

Patent Owner’s Motion should be denied because (a) it was caused by Patent Owner’s failure to follow the Board’s guidance on depositions, (b) it is merely a tactic to give Patent Owner an opportunity to conduct follow-up questioning after evaluating the initial questioning, and (c) it would impose an undue burden on Petitioner.

Several years ago, an expanded panel of the Board (then called the Board of Patent Appeals and Interferences), including the Chief Administrative Patent Judge, issued an opinion to “address issues associated with testimony related to how direct testimony affidavits are created and signed.” *Pevarello v. Lan*, Interference No.

105,394, Paper 85 at 2 (BPAI Jan. 12, 2007). There, the Board explained that questions regarding drafting of the expert's declaration (e.g., who drafted it, how many versions there were, who suggested which revisions, etc.) "are generally a waste of time, both for the witness and the Board." *Id.* at 19-21. Thus, "absent a compelling reason, [the Board] counsel[s] against any attempt to inquire on cross-examination into how direct testimony declarations came to be prepared." *Id.* at 23. And yet, Patent Owner spent a substantial amount of time exactly on such questioning, even after Petitioner objected and specifically cited *Pevarello*. (See Ex. 1030, 25:18-30:18, 34:5-38:3, 45:23-50:20, 166:20-171:5.)

The Board in *Pevarello* urged parties to focus on the merits (e.g., the invention and the prior art). Paper 85 at 22. While some exploration of credentials and possible bias "may need to be addressed," the Board directed parties to "'stick[]' to the relevant technical facts." *Id.* Yet here, Patent Owner spent the entire morning before the lunch break (i.e., half of the deposition) on non-merits questioning (such as declaration drafting, billing, Dr. Batzer's own patents, his experience in various other fields, and his work on other matters.) (See Ex. 1030, pages 6-122.) Had Patent Owner not wasted so much time on side issues, but instead focused on the merits, it easily would have had even more than an hour to spare.

Instead, Patent Owner apparently decided to exploit Dr. Batzer's time constraint to get a follow-up deposition where it would have the benefit of the

transcript of the initial questioning. After being informed sufficiently in advance that Dr. Batzer had a hard stop at 4:30 p.m., and despite being urged to begin the deposition early, Patent Owner decided to not even try to accommodate him, despite its assurances of “trying our best” to do so. Patent Owner instead just wasted all morning on side issues that are far afield from this IPR, initiated various breaks to prolong the time, and failed to even mention its alleged need for more time until 15 minutes before Dr. Batzer’s hard stop. As Petitioner explained at the deposition, the parties could have taken various actions to ensure the deposition would have been completed in one day – for example, starting early, taking less breaks, and/or taking shorter breaks. (*Id.* at 232:11-234:10.) But Patent Owner deliberately decided to lie in wait, sandbagging its ultimate end-goal, only to spring it on Petitioner 15 minutes before the end, when it was too late to make any accommodations. Such tactics should not be countenanced by granting this Motion. *See* § 42.12(a)(4)-(5), (7).

Lastly, granting the Motion would impose undue burden on Petitioner. Before the initial deposition, Petitioner needed to spend considerable time preparing Dr. Batzer for the deposition. If Patent Owner gets another deposition, Petitioner would need to re-prepare Dr. Batzer since several weeks have passed since the original preparation. And because Petitioner does not know the topics on which Patent Owner will ask questions, Petitioner would essentially need to fully re-prepare Dr. Batzer on everything, which would be unduly burdensome and expensive. *See* §

42.42.1(b) (Board’s rules are construed “to secure the just, speedy, and inexpensive resolution of every proceeding”). Thus, the Motion should be denied. Patent Owner has taken a deposition of Dr. Batzer (and decided what questions to prioritize), so 35 U.S.C. § 316(a)(5)(A) is met. Because of its underhanded tactics, as explained above, a follow-up deposition is most certainly not in the interest of justice. *See* § 316(a)(5)(B). And the seven-hour limit is set by rule, subject to the Board’s reduction, which is appropriate here. *See* §§ 42.53(c)(2); 42.5(b).

In the event that the Board is inclined to give Patent owner the extra hour in a follow-up deposition, Petitioner requests that such leave be conditioned as follows: (1) the deposition be done by Zoom or similar platform to reduce the burden and expense (*see* Motion 3); (2) the questioning be limited to topics that were not covered in the initial deposition (i.e., prohibit Patent Owner from going over previously asked topics), to avoid giving Patent Owner an advantage of using the transcript it has had for several weeks (*see* Motion 5 (focusing on portions of Dr. Batzer’s declaration that had not yet been discussed)); and (3) Patent Owner be required to identify with reasonable particularity the specific topics on which it wants to ask questions (e.g., “obviousness” or “claim construction” is not reasonably particular), to reduce Petitioner’s burden of having to re-prepare Dr. Batzer on the entire declaration again, only to have most of the preparation be wasted since only an hour remains for questions.

Date: September 11, 2023

Respectfully submitted,

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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.
Ex. 1030	Transcript of August 24, 2023 Deposition of Stephen A. Batzer, Ph.D.

CERTIFICATE OF SERVICE

I hereby certify that, on the date indicated below, I served the foregoing
Response, with Ex. 1030, via e-mail on:

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

Date: September 11, 2023

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