

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 OPPOSITION TO
PATENT OWNER'S MOTION TO EXCLUDE

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Ex. 1038	Email correspondence regarding Ravin's Objections

Patent Owner Ravin Crossbows, LLC (“Ravin”) filed a Motion (“Mot.,” Paper 38) to exclude certain exhibits submitted by Petitioner Hunter’s Manufacturing Company, Inc. d/b/a TenPoint Crossbow Technologies (“TenPoint”) in this IPR of U.S. Patent 9,354,015 (the “’015 Patent,” Ex. 1001). TenPoint opposes, as the Motion is meritless.

I. EX. 1031

Ravin concedes that it objected to Ex. 1031 only on February 21, 2024. Mot. 2. And yet, this exhibit was used, and served on Ravin, during the Teater deposition back on January 22, 2024. *See* Ex. 1034, 4, 254:5-12; 37 C.F.R. §42.53(f)(3) (exhibits used in a deposition must be served at the deposition). Thus Ravin’s objection a whole month later is much too late. *See* §42.64(b)(1); Ex. 1038, 1, 3 (information Ravin of same). Furthermore, Ravin failed to object to this exhibit during the deposition when it was introduced. *See* §42.64(a) (objections to deposition evidence must be made during the deposition); §42.53(f)(4), (8); *Qualcomm Inc. v. UNM Rainforest Innovations*, No. IPR2021-00377, Paper 66, 9 (PTAB July 15, 2022). While the Motion asserts that Ravin objected to this exhibit during the deposition (Mot. 2-3), a review of the provided citations shows that this is simply false – those cited objections were just to the form of certain questions, not to the exhibit itself. Such cavalier attitude toward the duty of candor should not be countenanced. *See* §42.11.

Even if Ravin's untimeliness is overlooked, its objections fare no better. TenPoint used Ex. 1031 to simply illustrate a hypothetical on which it questioned the witness, namely, a modification of the Islas prior art reference. Ex. 1034, 254:5-261:4. TenPoint could have just verbally described the Islas modification and asked the witness on it – all Ex. 1031 did was visually illustrate the modification to help the witness understand the questioning.

Ravin objects to Ex. 1031 as being irrelevant, unauthenticated, and hearsay. Mot. 3. But Ravin itself introduced a modified version of Islas in its Response. Paper 25, 72-73. Surely Ravin would not have introduced such similar figures showing Islas modifications if they were irrelevant, unauthenticated, and hearsay prohibited by the Federal Rules of Evidence ("FRE").

As Ex. 1031 describes a modification of Islas's crossbow, which is Ground 12 in this IPR, the exhibit is certainly relevant to this IPR, and thus not likely to waste time or cause confusion. *See* "Reply," Paper 31, 24 (citing Ex. 1037 ¶138 (in turn citing Ex. 1031)).

On authentication, Ravin errs in demanding a declaration as the only possible method. Per FRE 901(b)(3), the Board, as the trier of fact, can easily compare Ex. 1031 with Islas Fig. 1. *See also* §42.61(b)-(c). In any case, Dr. Batzer's declaration explained that Ex. 1031 is exactly what TenPoint purports it to be – a modification of Islas with a reverse draw configuration. Ex. 1037 ¶138.

Lastly, on hearsay, it is not entirely clear what Ravin’s argument is. The actual objection merely asserted FRE 801 and 802 in an unspecified fashion “to the extent that Petitioner attempts to rely on it to prove the truth of any matter asserted therein,” which is insufficiently particular to allow TenPoint to correct the objection. *See* Paper 33, 2-3; §42.64(b)(1) (requiring the grounds for the objection to be identified with sufficient particularity). It is unclear what exactly Ravin believes to be the “statement” in the exhibit, and who is the “declarant” making the statement, and whether the statement is offered to prove the truth of the matter asserted therein, as the exhibit merely illustrates a hypothetical modification of Islas discussed in the testimony of both Dr. Batzer and Teater. *See* FRE 801(a)-(c); Ex. 1037 ¶138; Ex. 1034, 254:5-261:4. Dr. Batzer testified how Islas could be modified to have a reverse-draw configuration. Ex. 2030, 282:22-283:18; Ex. 1037 ¶138. That testimony clearly is not hearsay. *See* FRE 801(c)(1). Ex. 1031 simply visually illustrates such a configuration.

II. EX. 1032

Just like for Ex. 1031, Ravin’s February 21 objection to Ex. 1032 came weeks after the exhibit was used and served at Teater’s February 6, 2024 deposition and is thus too late. *See* Ex. 1035, 336:4-9; §42.64(a), (b)(1); §42.53(f)(4), (8); Ex. 1038, 1, 3. The Motion’s assertion that Ravin objected to this exhibit at the deposition

(Mot. 4) is likewise false – the cited objections were, again, just to the form of a handful of questions, not to the exhibit itself.

Furthermore, it is unclear why Ravin is even moving to exclude this exhibit. Its own Motion states that “Petitioner does not rely on EX1032 in Reply or otherwise” (Mot. 4.) But a motion to exclude must “[i]dentify where in the record the evidence sought to be excluded was relied upon by an opponent.” Consolidated Trial Practice Guide 79 (2019). So if Ravin does not believe that TenPoint is relying on this exhibit, then it should not move to exclude it, as the Board will waste no time and is unlikely to be confused by an unrelayed-upon exhibit.

Even if the above deficiencies are overlooked, the authentication objection nevertheless fails. Ravin again is wrong in insisting that a declaration is absolutely required to authenticate an exhibit. *See* Mot. 4. The Board can compare Ex. 1032 Fig. B with Darlington’s Fig. 2 and see that Ex. 1032 Fig. B is simply the right side of Darlington’s Fig. 2. *See* Ex. 1013; FRE 901(b)(3). In any case, Teater confirmed this during his deposition. Ex. 1035, 336:4-25; FRE 901(b)(1), (3). And the Board can also compare Ex. 1032 Fig. A with page 8 of Ex. 2007. Ex. 2007 is Ravin’s Complaint against TenPoint in the parallel district court litigation. Ex. 2007, 1. According to the Complaint, page 8 shows an excerpt from Ravin’s website touting “the HELICOIL difference.” The upper image of this excerpt (captioned HELICOIL) purports to show the design on Ravin’s crossbows. The Board can

readily compare and ascertain that a portion of this excerpt's upper image is shown as Ex. 1032 Fig. A. FRE 901(b)(3); Ex. 1035, 341:9-11.

III. EX. 1033

As before, Ravin's February 21 objection to Ex. 1033 came weeks after the exhibit was used and served at Teater's February 6, 2024 deposition and is thus too late. *See* Ex. 1035, 346:16-25; §42.64(a), (b)(1); §42.53(f)(4), (8); Ex. 1038, 1, 3. There was no objection at the deposition that this exhibit is irrelevant, a waste of time, likely to cause confusion, and/or unauthenticated. Similarly, if Ravin does not believe TenPoint is relying on this exhibit (Mot. 4), then it should not move to exclude it, as the Board will waste no time and is unlikely to be confused by an unrelayed-upon exhibit.

Even overlooking the above deficiencies, the authentication objection should still be overruled. Again, contrary to Ravin's assertion (Mot. 5), a declaration is not the sole means of authenticating such an exhibit. The Board can readily compare and see that Ex. 1033 Fig. A is simply Ex. 1031; Teater confirmed this. *See* Ex. 1035, 346:17-22; FRE 901(b)(1), (3). And Ex. 1033 Fig. B simply shows a crossbow with power cables above and below the bowstring with no interference, as can be seen from the appearance and contents of the photo itself and as confirmed by Teater. *See* Ex. 1035, 346:23-347:6; FRE 901(b)(1), (4).

IV. EX. 1037

One of Ravin’s objections to portions of Ex. 1037¹ depends on its objection to Ex. 1031. Mot. 5. But as discussed above, that objection is meritless, and thus the corresponding objection to Ex. 1037 should likewise be overruled. Ravin’s view of causality is backwards: Dr. Batzer is not relying on Ex. 1031 to form his testimony; instead, Ex. 1031 is illustrating Dr. Batzer’s testimony, as explained above. Furthermore, Ravin’s assertion that Dr. Batzer’s testimony “is not based on sufficient facts or the product of reliable principles” (Mot. 5) is just that – a mere assertion, as Ravin utterly fails to explain why it believes that to be the case. Lastly on this objection, Ravin tries to find a difference between a “‘retooling’ of Islas” and a modification of Islas that “relocate[es] power cables.” Mot. 5. But it is not at all clear why the difference matters (and Ravin does not explain). And in any case, they are not different at all but rather Ravin using different phrases to describe the same thing.

Ravin’s next objection is that Dr. Batzer allegedly has no personal knowledge or expertise on certain topics. Mot. 6. But the objections that Ravin previously served merely objected generically pursuant to a handful of rules “to the extent” Dr.

¹ Ravin several times cites ¶137 of Ex. 1037 as relying on Ex. 1031 (Mot. 1, 3, 5), but it presumably means ¶138.

Batzer's testimony was not permitted by FRE 602 or 702-703, without specifying the "extent" and leaving TenPoint to guess what the alleged defects were, why, and how to cure them. *See* Paper 33, 1. Ravin nowhere mentioned that the objection was to Dr. Batzer's evaluation of Teater, the crossbow market, cam lean,² and synchronization. *Compare* Mot. 6 with Paper 33, 1. In fact, Ravin's objections did not even specify which paragraphs of Ex. 1037 it objected to (*see* Paper 33, 1-2), leaving TenPoint at a loss regarding which of Ravin's objections are directed to which of the 78 pages of that exhibit. Ravin's objections were not sufficiently particular and should be overruled on that basis alone. *See* §42.64(b)(1); Ex. 1038, 1-2 (informing Ravin of same).

Even if Ravin's objections were considered, they are, again, just naked assertions, as Ravin does not explain why it believes Dr. Batzer cannot opine about another witness's credibility, or why Dr. Batzer could not opine about crossbows. *See* Mot. 6. Dr. Batzer can assuredly explain, e.g., where another person gives incorrect technical information, where such a person's testimony strains credulity based on Dr. Batzer's own experience with such matters, and whether another person's stated education is adequate in a field in which Dr. Batzer is an expert. Such testimony is within Dr. Batzer's knowledge and expertise and goes towards the believability (i.e., credibility) of such other person's testimony and how much

² Ravin's inaccurate quotation from Ex. 1037 ¶58 is missing words.

weight to give it. Likewise, Dr. Batzer is more than qualified to opine about crossbows – indeed, Ravin’s own witness Teater conceded that Dr. Batzer qualifies as a person of at least ordinary skill in the art (*see* Ex. 1034, 68:15-17), and Ravin did not file any objections to Dr. Batzer’s initial declaration (Ex. 1016), which established his qualifications. *See also* Ex. 1030, 64:11-66:10, 82:10-24, 93:14-101:19, 105:3-17, 140:13-143:6, 171:7-175:3. Ravin has thus waived any challenge to Dr. Batzer’s qualifications to testify about crossbows.

Lastly, Ravin objects under FRE 401-403. Mot. 6. The previously served objection makes just a naked assertion with no explanation of which portions of the exhibit are allegedly irrelevant, prejudicial, confusing, or wasteful, or why. *See* Paper 33, 1-2; §42.64(b)(1) (objections must be sufficiently particular). The Motion for the first time identifies which paragraphs of the exhibit are so objected to, and the sole reason appears to be that the Reply “does not rely” on those paragraphs. *See* Mot. 6. As TenPoint has already explained (and assuming Ravin’s non-particularization is overlooked), if Ravin does not believe that TenPoint is relying on those paragraphs, then it should not move to exclude it, as the Board will waste no time and is unlikely to be confused by an unrelayed-upon portion of the exhibit. Furthermore, Ravin’s premise is misguided. There is no requirement that every single piece of information in an exhibit must be expressly cited in a merits document to pass FRE 401-403. The identified paragraphs discuss Darlington,

Norkus, and Islas, which are asserted in Grounds 7-9 and 12, and are thus plainly relevant to this IPR and easily pass FRE 403.

* * *

For the above-discussed reasons, Ravin's Motion to Exclude should be denied and its objections overruled.

Date: April 9, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on the date indicated below, I served the foregoing

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