

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 OPPOSITION TO
PETITIONER'S MOTION TO EXCLUDE**

I. INTRODUCTION

Patent Owner opposes Petitioner's Motion to Exclude Exhibits 2005, 2029, and 2031. Paper 39. Patent Owner withdraws Exhibit 2012. For the remaining Exhibits, Petitioner moved to exclude the Exhibits on the following alleged grounds:

Exhibit	Description	Alleged Reason to Exclude
Ex. 2005	Animation of Figure 12 of U.S. Patent No. 9,354,015	Allegedly not authenticated, inadmissible hearsay, not the best evidence, irrelevant
Ex. 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.)~~	~~Allegedly inadmissible hearsay, irrelevant.~~
Ex. 2029	Expert Declaration of Jonathan Teater	Allegedly not a POSA
Ex. 2031	Copy of an article titled: "Untunable Bow? Nock Travel Could be Your Problem," downloaded from: https://www.bowhuntingmag.com/editorial/untunable-bow-nock-travel-could-be-your-problem/382681	Allegedly inadmissible hearsay, lacked foundation

II. ARGUMENT

A. Exhibit 2005: The animation is a demonstrative that should not be excluded because it is not evidence.

Petitioner argues that the animation should be excluded for several reasons, none of which preclude consideration of Exhibit 2005 as a demonstrative, which is

what it is. Patent Owner is not seeking to introduce Exhibit 2005 into evidence. Petitioner fails to address this critical point, which moots Petitioner's objections or commands that such objections be overruled.

Demonstratives are visual aids to a party's oral presentation regarding arguments and evidence previously presented and discussed in the papers. *Netflix Inc. et al. v. DIVX, LLC*, IPR2020-00646, Paper 38 at 5 (PTAB May 19, 2021). The Board recognizes that demonstratives are not evidence. *Id.* In doing so, the Board has denied motions to exclude demonstrative exhibits or overruled them as moot. *Id.*; see also *Canfield Scientific, Inc. v. Quantificares S.A.*, IPR2021-01511, Paper 61 at 9, 68 (PTAB Mar. 9, 2023) (overruling party's objections because "Demonstratives for oral argument are not evidence, and we do not rely on demonstratives as evidence in our decision making.... Because demonstratives do not affect our decision making, [a party's] objections to the demonstratives likewise do not affect our decision making and are therefore moot.").

Here, the demonstrative animation that Patent Owner seeks to use illustrates, quite literally, how the cams rotate around the axis on the limbs when the crossbow is drawn as described in Claim 1 of the '015 Patent. This is not evidence, but an illustration of Patent Owner's argument. Petitioner's motion to exclude the animation should be denied.

B. Exhibit 2012: Patent Owner withdraws this Exhibit.

Patent Owner denies the merits of Petitioner's arguments regarding Exhibit 2012. Nevertheless, without any admission, Patent Owner withdraws this Exhibit.

C. Exhibit 2029: Petitioner's motion to exclude Mr. Teater's expert testimony is improper.

Petitioner's motion to exclude Exhibit 2029 should be denied. Petitioner's motion to exclude is premised on Petitioner's faulty assertion that Mr. Teater is not a POSA under the standard Petitioner set forth in its Petition:

A hypothetical POSA to which the '015 Patent pertains would be a *technical person* who has at least some experience . . . *reviewing crossbows* . . . and is *generally familiar with prior art crossbows*. Such a person . . . would have *several years of experience in the field of archery*.

Paper 1, 28 (internal citations omitted) (emphasis added); Paper 39, 3.

Mr. Teater is at least a POSA under Petitioner's definition,¹ which is all that is needed for Mr. Teater to qualify as an expert and for the Board to consider his opinions. *Kyocera Senco Indus. Tools Inc. v. ITC*, 22 F.4th 1369, 1376-77 (Fed. Cir. 2022). Mr. Teater meets all three prongs of Petitioner's POSA definition.

¹ Solely for purposes of this proceeding, Patent Owner does not dispute the Petitioner's POSA definition. POR, 3.

Mr. Teater is a “technical person” who has not just “some experience . . . reviewing [] crossbows” – he has extensive experience reviewing crossbows from 2007 until 2021. EX2029, ¶¶3 6. Mr. Teater’s 14 years of reviewing crossbows, (*id.*, ¶3), encompasses the relevant period of priority – Claim 1 of the ’015 Patent has a December 16, 2013 priority date. EX1001, 1. And, during this period, he developed general familiarity with prior art crossbows because for those 14 years, he wrote specialized evaluations of compound bows and crossbows. EX2029, ¶3.

More specifically, for 14 years, Mr. Teater evaluated over 100 crossbows, from various manufacturers, and published his in-depth performance and technical assessments in industry publications, (EX2029, ¶3), evidencing his “several years of experience in the field of archery.” Further, for 14 years spanning the December 2013 priority date, Mr. Teater assessed crossbows and evaluated sound, vibration, trigger, efficiency, energy output, functionality, and overall design. *Id.* And Mr. Teater helped to develop and publish the very standards by which crossbows are tested and evaluated. *Id.*, ¶4. In addition, Mr. Teater actively served on the Archery Trade Association’s *technical* committee for standards and guidelines. *Id.*, ¶7. As such, Mr. Teater is more than qualified as a POSA.

The testimony that Petitioner cites in purported support of its position underscores Mr. Teater’s qualifications in this regard: “I’m an expert in reviewing functionality and crossbow design and development.” EX1034, 30:11-12.

Mr. Teater clarified further, stating that the only area he lacked design expertise was in stock design, which is not relevant to Claim 1 of the '015 Patent:

Q. Okay. Well, when you said design of crossbows, what did you mean?

A. Not all aspects of crossbows. I've looked at many elements of crossbows. There's many features of them. There's human factors, engineering. There's a lot of aspects of crossbow design that I'm not familiar with.

Q. Such as...

A. Some of the stock design development I'm not familiar with.

Q. Okay. Anything else?

A. No.

Q. Just stock design?

A. Stock design?

Q. Everything else you feel you are a design expert in crossbows; is that correct?

A. Yes.

Id., 31:7-23.

It is this expertise that Petitioner likely wanted to leverage by engaging Mr. Teater to test Petitioner's products in the past. Mr. Teater testified that Petitioner itself "would send [Mr. Teater] products that were not publicized to perform research and development and support for them from time to time." *Id.*, 34:20-35:1. Petitioner's utilization of Mr. Teater's expertise belies its current position that Mr. Teater does not meet the requirements Petitioner set forth in its POSA definition.

Second, Mr. Teater's academic background does not supplant his qualifying expertise as a "technical person who has at least some experience" "reviewing crossbows" "and is generally familiar with prior art crossbows" with "several years of experience in the field of archery." Paper 1, 28. There is no requirement under Petitioner's POSA definition that Mr. Teater have a bachelor's degree in mechanical engineering or have done the coursework that Petitioner identifies in its Motion (which also is not part of Petitioner's POSA definition). Petitioner's POSA definition is clear that these credentials are interchangeable with industry experience: "alternatively, [a POSA] would have several years of experience in the field of archery or engineering related to bows and/or crossbows." *Id.* Petitioner's newly-minted POSA definition, asserted nearly 16 months after submitting its Petition, is untimely and is no basis to exclude Exhibit 2029.

Petitioner's complaints that Mr. Teater has not taught courses about crossbows, has not been named as an inventor on a patent, and is not a licensed

professional engineer are equally baseless. Paper 39, 4. Again, Petitioner's POSA definition does not require such experience or credentials. Teaching courses related to crossbows or compound bows, being a named inventor on any archery-related patent (or any other patent), or being a licensed professional engineer is not required under Petitioner's POSA definition. Petitioner's untimely and improper recalibration of a POSA's qualifications under the auspices of better positioning Petitioner's expert's credentials, is not a basis to exclude Exhibit 2029.

Finally, Petitioner's disagreements with certain of Mr. Teater's responses to Petitioner's cross-examination are not a basis to exclude Mr. Teater's testimony. Paper 39, 5-8. While Petitioner offers much criticism of Mr. Teater's testimony, Petitioner fails to connect Mr. Teater's purported deficiencies with issues relevant to the patentability of Claim 1 of the '015 Patent. *Id.*, 5-6. Rather, Petitioner is using its Motion to substantively argue against Mr. Teater's opinions, (*id.*, 6-7), which is improper. See *TwinStrand Biosciences, Inc. v. Guardant Health, Inc.*, IPR2022-01400, Paper 41 at 49, (PTAB Jan. 26, 2024) (denying motion to exclude expert testimony); PTAB Consolidated Trial Practice Guide (Nov. 2019), 79 ("A motion to exclude must explain why the evidence is not admissible (e.g., relevance or hearsay) but may not be used to challenge the sufficiency of the evidence to prove a particular fact.").

Mr. Teater's background and 14-year history of technically evaluating over 100 crossbows, in addition to helping set the standards by which crossbows are evaluated, fits squarely within the Petitioner's POSA definition. As such, the Board should deny Petitioner's motion to exclude Exhibit 2029.

D. Exhibit 2031: The Winke Article should not be excluded because it is used to show the context of a POSA's general knowledge.

None of Petitioner's arguments about the Winke article justify exclusion. Patent Owner relies on the article for what it shows about a POSA's general knowledge around the relevant priority date, which provides more fulsome context to Mr. Teater's testimony, who as an expert may consider hearsay. *See* FRE 703. The Winke article is not being cited as prior art, and its relevance is not limited to whether it predates December 16, 2013. And, in any event, significantly, "[s]tatus as a prior art printed publication is a substantive issue, not an evidentiary issue." *Caterpillar Inc. v. Wirtgen Am., Inc.*, IPR2017-02187, Paper 42 at 17 (PTAB May 21, 2019). The Board should deny Petitioner's motion to exclude the Winke article.

III. CONCLUSION

For at least the reasons provided above, Patent Owner asks the Board to deny Petitioner's motion to exclude Exhibits 2005, 2029, and 2031. Patent Owner also requests that if the Board excludes any one of these Exhibits, the Board not exclude

any of the arguments that cite these Exhibits because each of the arguments are supported by facts independent of the content of these Exhibits.

Dated: April 9, 2024

Respectfully submitted,

/Christopher M. King/
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Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Patent Owner's Opposition to Petitioner's Motion to Exclude** was served on April 9, 2024, by email to Petitioner's counsel of record:

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Dated: April 9, 2024

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