

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 REPLY TO PATENT OWNER'S OPPOSITION TO
PETITIONER'S MOTION TO EXCLUDE

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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Petitioner Hunter's Manufacturing Company, Inc. d/b/a TenPoint Crossbow Technologies ("TenPoint") moves to exclude certain evidence submitted by Patent Owner Ravin Crossbows, LLC ("Ravin") in this IPR of U.S. Patent 9,354,015 (the "'015 Patent," Ex. 1001) and responds to arguments put forth in PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO EXCLUDE ("Opposition" or "Opp.>").

I. EX. 2005

Ravin argues that TenPoint's objection to the animation on grounds of being unauthenticated, inadmissible hearsay, not the best evidence, and irrelevant are invalid because the animation is a demonstrative and thus not subject to the rules of evidence. (Opp. 2.) Accepting Ravin's classification of the animation as a demonstrative despite their failure to properly indicate that the exhibit was intended as a demonstrative, this animation should still be excluded as it introduces arguments not in the record. (*See Netflix Inc. et al. v. DIVX, LLC*, IPR2020-00646, Paper 38 at 5 (PTAB May 19, 2021) ("[D]emonstratives shall be clearly marked with the words "DEMONSTRATIVE EXHIBIT – NOT EVIDENCE" in the footer.") "Demonstratives are not a mechanism for making new arguments." *Id.* "[N]o new evidence may be presented at the oral argument." (CTPG 85; *see also St. Jude Med., Cardiology Div., Inc. v. Bd. of Regents of the Univ. of Mich.*, IPR2013-00041, Paper

65 at 2–3 (PTAB Jan. 27, 2014) (explaining that “new” evidence includes evidence already of record but not previously discussed in any paper of record.)

Ex. 2005 introduces mechanical functionality of components not present in the drawings or text of the ‘015 patent nor previously raised in any paper before the Board. *See Dell Inc. v. Acceleron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (holding that the Board is obligated under its own regulations to dismiss untimely argument “raised for the first time during oral argument”). In now classifying the animation as a demonstrative, Ravin presents details of the claimed invention not present in the static patent images, further evidenced by Ravin’s failure to submit the animation to any form of authentication process or substantive review. Patent Owner’s Ex. 2005 should be excluded.

II. EX. 2029

As relevant to the ‘015 Patent, the parties agree that a POSA would be a technical person who has at least some experience working in the field of archery, reviewing crossbows or engineering related to bows and/or crossbows, and generally familiar with prior art crossbows. Such a person would likely have at least a bachelor’s degree in mechanical engineering or, alternatively, would have several years of experience in the field of archery or engineering related to bows and/or crossbows. (“Pet.,” Paper 1, 28; Ex. 1016 ¶17; Opp. 3.)

Ravin argues that Mr. Teater qualifies as a “technical person” under this definition because of his 14 years working as a crossbow reviewer and the fact that Mr. Teater served on the “Archery Trade Association’s *technical* committee for standards and guidelines.” (Opp. 4, emphasis original.) Ravin further argues Petitioner is now attempting to “recalibrate” the necessary POSA qualifications by insisting that such “technical person” in this case must possess some form of technical education or training. (Opp. 4.)

Ravin’s accusation that Petitioner is attempting to adjust the definition of POSA is misplaced as it is in fact Ravin who is now attempting to remove the “technical person” requirement from the POSA definition by suggesting that because Mr. Teater satisfies the latter half of the POSA definition because he possesses experience reviewing crossbows that experience reviewing crossbows additionally qualifies him as a technical person. (Opp. 6.) Had the parties intended for crossbow reviewing experience to qualify someone as a POSA there would have been no need to restrict the definition to include a “technical person.” Ravin argues that “[t]here is no requirement under Petitioner’s POSA definition that Mr. Teater have a bachelor’s degree in mechanical engineering” and that because the latter half of the POSA definition provides industry experience as an alternative to a mechanical engineering degree that is “clear that these credentials are interchangeable with industry experience.” (Opp. 6.) While it is true an individual without a mechanical

engineering degree may qualify as a POSA under this definition with the necessary industry experience, this experience does not supplant the need for the individual to be a technical person. Mr. Teater fails to qualify as a technical person.

While serving on a technical committee can certainly provide exposure to technical issues, it does not equate to possessing the depth of knowledge and understanding that typically comes with a formal technical education as clearly evidenced by Mr. Teater's multiple incorrect responses to basic technical questions. (Ex. 1037, ¶26, Ex. 1034, 192:1-6, Ex. 1037 ¶14.) Furthermore, Mr. Teater's involvement or responsibilities related to his committee membership are undefined and thus his mere membership on a self-identified "technical" committee cannot qualify him as a technical person for the purposes of the parties' POSA definition.

III. EX. 2031

Ravin makes no effort to counter Petitioner's argument that Ex. 2031 is not actually a published article or that article has not been properly established as prior art, but merely argues that Ravin is permitted to use the article to establish a POSA's "general knowledge around the relevant priority date" that "provides more fulsome context to Mr. Teater's testimony." (Opp. 8.) Ravin further argues that because expert witnesses are permitted to consider hearsay in formulating their opinions and because the "Winke article is not being cited as prior art" that Ravin's expert is permitted to inform his understanding of the prior art using pieces of information

that are themselves not prior art. (Opp. 8.) Ravin fails to explain why an expert consideration of hearsay justifies an expert establishing a “general knowledge” of what a person of ordinary skill in the art would have understood as of the priority date by considering information not publicly available on that date and, by Ravin’s own admission, is not a part of the prior art.

The Winke article does not contain a publication date or any other information to indicate when it was generated or made available to the public. (Patent Owner’s Ex. 2031.) Patent owner has failed to produce any publication or creation date information and baselessly asserts that the article provides valuable information regarding “general knowledge around the relevant [December 16, 2013] priority date.” (Opp. 8.) The state of the prior art is evaluated as of the relevant priority date, and patent examiners will not consider an undated reference to be part of the prior art. (*See Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364 (Fed. Cir. 2021); MPEP 2200-213.) The Winke article may contain information not known to those practicing the art until nearly a decade after the priority date in question and thus is unsuitable for consideration as to what a POSA as of the priority date would have known or understood and thus should be excluded.

Date: April 16, 2024

Respectfully submitted,

/John Skeriotis/

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CERTIFICATE OF SERVICE

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