

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUM INDUSTRIAL TECHNOLOGY, INC.,
Petitioner,

v.

AMSTED RAIL COMPANY, INC.,
Patent Owner

IPR2023-00538
Patent 9,365,223 B2

Before JAMES P. CALVE, KEVIN W. CHERRY, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

WOODS, *Administrative Patent Judge*.

ORDER
Granting Petitioner's Motion to Correct Petition
37 C.F.R. §§ 42.1(b), 42.5, 42.104(c)

I. INTRODUCTION

Pursuant to our authorization, Petitioner filed a motion to correct clerical errors in the Petition. Paper 7 (“Mot.” or “Motion”). Patent Owner opposes Petitioner’s motion. Paper 9 (“Opp.” or “Opposition”).

We grant the Motion.

II. BACKGROUND

Under our Rules, “[a] motion may be filed that seeks to correct a clerical or typographical mistake in the petition. The grant of such a motion does not change the filing date of the petition.” 37 C.F.R. § 42.104(c). We apply our Rules “to secure the just, speedy, and inexpensive resolution of every proceeding.” *Id.* § 42.1(b).

Petitioner moves to correct the Petition (Paper 1, “Petition”) filed on January 30, 2023. Mot. 1. Petitioner submits that the Petition includes a clerical error as a limitation was “inadvertently omitted from claim 5,” but explains that this limitation “is fully addressed in the Petition with respect to claim 8.” *Id.* at 2. Due to this error, Petitioner seeks the following:

(1) correcting the Listing of Claims to accurately recite the text of claim 5;

(2) adding a cross-reference within the discussion of claim 5 to the existing discussion of the corresponding limitation in claim 8 in Ground 1;

(3) moving the discussion of claim 5 and its dependent claims from Ground 4 to Ground 5, and adding a cross-reference within the discussion of claim 5 to the existing discussion of the corresponding limitation in claim 8 in Ground 5; and

(4) updating the Table of Contents, Table of Authorities, and internal crossreferences to reflect any resulting changes to section headings or page numbering.

Id. at 2–3. Petitioner submits both a Redlined Version (Ex. 1018, “Redlined Version”) that identifies the proposed corrections as well as a clean-version of the Corrected Petition (Ex. 1019, “Corrected Petition”).

Petitioner also suggests that it will file a subsequent petition to correct the errors if the Board denies the Motion. *See* Mot. 5.

Patent Owner opposes the Motion, arguing that “the addition of a claim element and changes to prior art mapping are substantive.” Opp. 2. Patent Owner further explains that the proposed changes “shifts a broad swath of dependent claims from Ground 4 to Ground 5, *dramatically altering* the substance of those grounds.” *Id.* at 3 (emphasis added).

Patent Owner also requests, “In the event the Board grants Petitioner’s Motion, . . . one month of additional time to prepare its preliminary response, which should apply to all related petitions.” *Id.* at 5.

III. ANALYSIS

As an initial matter, Rule 104(c) is “remedial in nature and is therefore entitled to a liberal interpretation.” IPR2013-00063, Paper 21, 7 (PTAB Jan. 16, 2013) (internal citation omitted); *see also* Mot. 3 (citing the same).

We agree with Petitioner that the changes it seeks are clerical and fall within Rule 42.104(c). *See* Mot. 3.

Although the changes appear to “dramatically alter” the Petition (Opp. 3; *see also* Ex. 1018 , 66–76, 84–94), they do not, as the changes simply

address the fact that claims 7, 13–18, 20–22, and 32 depend from claim 5 and must also be moved to Ground 5. *See* Mot. 2 n.7 (explaining the same).

We also point out that claim 8, which depends from claim 5, *does not further limit claim 5*. *Compare* Ex. 1001, 16:27–44, *with id.* at 16:51–60. Because Petitioner addressed claim 8 in original Ground 5, Petitioner is not supplementing its legal analysis by moving claim 5 from Ground 4 to Ground 5. *See* Mot. 2–3.

We further point out that the facts here are similar to those presented in at least one prior Board decision that granted a similar motion.

In *Unified Patents v. Universal Secure Registry LLC*, the Board granted petitioner’s motion to correct a clerical error resulting from the inclusion of claims within the wrong challenged ground. *See Unified Patent Inc. v. Universal Secure Registry LLC*, IPR2018-00067, Paper 11, 2 (PTAB Mar. 14, 2018). Although the facts here are not identical to those in *Unified Patents*, as pointed out by Patent Owner (*see* Opp. 4), the facts are similar enough. As in *Unified Patents*, the corrections sought here are also clerical in nature.

Moreover, granting Petitioner’s Motion would help “to secure the just, speedy, and inexpensive resolution of [this] proceeding.” 37 C.F.R. § 42.1(b). For example, by allowing Petitioner to correct these errors, it would eliminate the need for Petitioner to file another petition with the correct claim listing. *See* Mot. 5 (“Petitioner could therefore move to withdraw the current Petition and file a new one that includes the proposed corrections.”). We agree with Petitioner that filing another petition may correct the errors, but “would needlessly tax Board resources and result in duplicative filings.” *Id.* It would also detract from the just, speedy, and

inexpensive resolution of this proceeding without any apparent benefit to either party, the Board, or the public interest.

Finally, we deny Patent Owner's request for an additional month to file a preliminary response in this proceeding and the related proceedings. Opp. 5.

Patent Owner will not be prejudiced by the Corrected Petition because Patent Owner was made aware of the errors shortly after the Petition was filed. *See* Mot. 2. In particular, "Petitioner notified Patent Owner of the clerical error on February 16, 2023," about two weeks after the Petition was filed. *Id.*; *see also* Paper 3, 1 (assigning a filing date of the Petition as January 30, 2023). Since March 31, 2023, Patent Owner has had access to the Redlined Version and a clean version of the Corrected Petition (Exs. 1018, 1019) and the preliminary response is not due until May 15, 2023. *See* Paper 3, 2.

IV. CONCLUSION

The errors that Petitioner seeks to correct are clerical under 37 C.F.R. § 104(c). In order "to secure the just, speedy, and inexpensive resolution of [this] proceeding" (*id.* § 42.1(b)), we grant Petitioner's Motion.

V. ORDER

Accordingly, it is

ORDERED that Petitioner's Motion (Paper 7) is granted; and

FURTHER ORDERED that Petitioner shall file by April 15, 2023, a clean copy of the Corrected Petition (currently filed as Exhibit 1019) as a Paper.

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Patent 9,365,223 B2

PETITIONER:

Eric J. Rakestraw
Andrea L. Shoffstall
Daisy Manning
HUSCH BLACKWELL LLP
PTAB-ERakestraw@huschblackwell.com
PTAB-AShoffstall@huschblackwell.com
PTAB-DManning@huschblackwell.com

PATENT OWNER:

Jeff Schwartz
P. Marshall Ticer
Ryan North Miller
FOX ROTHSCHILD LLP
jeschwartz@foxrothschild.com
mticer@foxrothschild.com
rmiller@foxrothschild.com