

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOM ENTERPRISES, LLC,
Petitioner,

v.

ELAINE AND REINHOLD W. VIETH,
Patent Owner.

IPR2023-00726
Patent 9,066,958 B2

Before JOHN G. NEW, SHERIDAN K. SNEDDEN, and
CYNTHIA M. HARDMAN, *Administrative Patent Judges*.

HARDMAN, *Administrative Patent Judge*.

ORDER
Granting Petitioner's Unopposed Motion to
Submit Supplemental Information
37 C.F.R. § 42.123(a)

Petitioner filed an authorized motion to submit supplemental information pursuant to 37 C.F.R. § 42.123(a). Paper 26 (“Mot.”). Patent Owner does not oppose the motion. *See id.* at 1; *see also* Ex. 2015 (conference call transcript), 39:2–40:21. For the reasons discussed below, we grant Petitioner’s motion.

BACKGROUND

Petitioner’s patentability challenges in the Petition are based in part on two German-language references, Harder and Wolf. Mot. 1. In support of its challenges, Petitioner submitted declarations from translators, purporting to attest to the accuracy of the Harder and Wolf translations Petitioner submitted with the Petition. *See id.* Petitioner also submitted a declaration from June Munford, regarding the alleged public accessibility of its asserted prior art references. *See id.* In its Preliminary Response, Patent Owner contested the adequacy of Petitioner’s translations and the translator declarations. *See id.* Patent Owner also challenged the public accessibility of Harder. *See id.* at 1–2.

In its Motion, Petitioner “seeks to submit supplemental information that will further demonstrate the accuracy of the translations submitted and the public accessibility of Harder.” *Id.* at 3. In particular, Petitioner requests authorization to submit Exhibits 1019–1023, which Petitioner has already served on Patent Owner. *See id.* at 3.

ANALYSIS

Within one month of the date a trial is instituted, a party may seek authorization to submit supplemental information that is relevant to a claim for which the trial has been instituted. 37 C.F.R. § 42.123(a). There is no dispute that Petitioner’s request is timely. On this record, we accept

Petitioner's representations that proposed Exhibits 1019–1023 relate to the content of Harder and Wolf, and the public availability of Harder. *See* Mot. 4–6. Accordingly, we find that the proposed exhibits are relevant to the instituted obviousness grounds.

Despite Petitioner's satisfaction of the timeliness and relevance requirements of 37 C.F.R. § 42.123(a), we may consider additional factors in determining whether to grant or deny a motion to submit supplemental information, including whether granting the motion would impact the timely completion of this proceeding, and whether the supplemental information would change the evidence underlying the grounds in the petition. *See Redline Detection, LLC v. Star Envirotech, Inc.*, 811 F.3d 435, 446–47 (Fed. Cir. 2015) (citing 37 C.F.R. § 42.5(a), (b)); *see also Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29, 15 (PTAB Dec. 20, 2019) (precedential) (“The opportunity to submit additional evidence does not allow a petitioner to completely reopen the record, by, for example, changing theories after filing a petition.”).

On this record, Petitioner adequately demonstrates that granting the Motion would not negatively impact the timely completion of this IPR or change the grounds of unpatentability in the Petition or the evidence initially presented to support those grounds. *See* Mot. 6–7. Additionally, we agree with Petitioner that there is no prejudice to Patent Owner in allowing the supplemental information into the record at this stage, including in view of the nature of the materials, the Scheduling Order, and Patent Owner's lack of opposition to this motion. *See id.* at 7.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's motion to submit supplemental information is *granted*; and

FURTHER ORDERED that within two business days of this Order, Petitioner shall file each of proposed Exhibits 1019–1023 as exhibits in this IPR.

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