

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FUSION ORTHOPEDICS, LLC,
Petitioner,

v.

EXTREMITY MEDICAL, LLC,
Patent Owner.

IPR2023-00894
Patent 11,298,166 B2

Before JEFFREY N. FREDMAN, ROBERT A. POLLOCK, and
JAMIE T. WISZ, *Administrative Patent Judges*.

POLLOCK, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On May 1, 2024, a conference call was held with Judges Fredman, Pollock, and Wisz, and counsel for the parties to discuss a request by Fusion Orthopedics, LLC (“Petitioner”) to submit, in support of its Opposition to Patent Owner’s Motion to Amend, computer models created by Petitioner based on certain drawings of U.S. Patent No. 11,298,166 B2 (Ex. 1001, “the ’166 patent”). Neither party provided a court reporter for the call.

During the call, Petitioner’s counsel, Mr. Kamholz, explained that Petitioner’s declarant used a computer program called “Blender” to create computer models of several drawings of the ’166 patent. According to Petitioner, the models are relevant to Patent Owner’s Motion to Amend (Paper 26) because the proposed substitute claims lack written description support in the drawings. More specifically, Petitioner contends that the relevant parts of the assemblies are not visible in the drawings of the ’166 patent. The purpose of the models is to reconstruct hidden parts of the assemblies. Petitioner argues that some of the computer models were previously introduced into evidence during the deposition of Mr. Dominguez, as the models were displayed digitally to the deponent, and Patent Owner did not object to the models during the deposition.

Patent Owner’s counsel, Mr. Ferraro, indicated that Patent Owner opposes the submission of the computer models because evidentiary issues preclude admissibility. Mr. Ferraro argued that the models were “self-serving,” “purely speculative,” and lacking corroboration or authentication. Judge Pollock pointed out that Petitioner plans to introduce declaration testimony to authenticate the models.

Petitioner’s counsel indicated that Petitioner does not dispute Patent Owner’s right to object to the models and file a motion to exclude after the

models have been submitted. At this time, Petitioner simply wants to enter the models and declaration into the record, and serve Patent Owner with the models in their native format as stored by the Blender program. Patent Owner indicated that it does not oppose the files being submitted, and that Patent Owner plans to file a motion to exclude.

Petitioner inquired as to an acceptable method for uploading the models into the P-TACTS system. Judge Pollock responded that .MOV video format would be acceptable, as the Board does not have the ability to access the native 3D modeling files. Mr. Kamholz indicated that Petitioner's expert has the ability to render the 3D models as .MOV video files, and that Petitioner can upload the .MOV files as exhibits in P-TACTS.

III. ORDER

Accordingly, in consideration of the foregoing, it is hereby:

ORDERED that Petitioner is authorized to upload renderings of the computer models as .MOV video files to the P-TACTS system as exhibits, together with a one-page description of the exhibits; and

FURTHER ORDERED that Petitioner shall serve the underlying computer models on Patent Owner in their native format.

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