

Case IPR2024-00340

Patent 10,791,808 B2

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHENZHEN PINCAN TECHNOLOGY CO., LTD.,

Petitioner,

v.

RIDGE WALLET, LLC,

Patent Owner.

Case IPR2024-00340

Patent 10,791,808 B2

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
MOTION FOR ADDITIONAL DISCOVERY**

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I. INTRODUCTION

The additional discovery that Patent Owner (“PO”) seeks is not “in the interests of justice.” 37 C.F.R. § 42.51(b)(2)(i). PO’s underlying assumption that Mosaic Brands Inc. d/b/a Storus (“Mosaic”) was a real-party-in-interest (“RPI”) in IPR2024-00340 (“the ’340 IPR”), is entirely based on speculation and conjecture—none of the evidence PO relies on demonstrates that Mosaic has had any involvement with the ’340 IPR. Moreover, the requested discovery would not bear useful information that would result in terminating this proceeding. In the PO’s motion, PO frequently employs terms up to nine times that signify “possibility” or similar concepts, articulating fanciful conjectures that are wishful and unsupported by evidence. Specifically, the word “likely” was used five times, “may” once, “could have” twice, and “likelihood” once. Thus, PO’s requested discovery does not serve in the interests of justice, but rather imposes unnecessary and burdensome discovery on SHENZHEN PINCAN TECHNOLOGY CO., LTD., (“PINCAN ”) and should be denied.

II. ARGUMENT

A. Garmin Factor 1 Is Not Satisfied Because PO’s Allegation That Useful Information Will Be Found Is Merely Speculative.

PO fails to meet the threshold requirement in Garmin Factor 1, that PO must already be “in possession of evidence tending to show beyond speculation that in fact something useful will be uncovered.” *Garmin Int’l Inc. v. Cuozzo Speed Techs. LLC*, No. IPR2012-00001, Paper 26 at

6–7 (P.T.A.B. Mar. 5, 2013) .

PO incorrectly contends that an RPI is merely a “party that desires review of the patent. Thus the ‘real party-in-interest’ may be . . . the party or parties at whose behest the petition has been filed.” Mot. at 3. If this were the standard, any two defendants charged with infringement of the same patent would automatically become RPIs in each other’s petitions, regardless of the underlying facts and circumstances. Instead, the proper RPI inquiry is “typically focuse[d] on whether a party controls, funds, or directs the ‘petitioner’s participation in a proceeding.’” *IOENGINE, LLC v. PayPal Holdings, Inc.*, 607 F. Supp. 3d 464, 514 (D. Del. 2022) (Bryson, J.) (quoting *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1342 (Fed. Cir. 2018)). PO provides no convincing evidence beyond mere speculation that PINCAN filed the ’340 IPR at Mosaic’s behest and provides no evidence that Mosaic had any direction or control over that IPR.

Swztech, PINCAN, and Mosaic were all defendants in a 337 investigation initiated by the PO at the ITC. To respond to the investigation, Swztech and PINCAN jointly hired attorneys from GLACIER LAW LLP (“GLACIER”) as defense lawyers, and also together hired Dr. Cameron as an expert witness. All these actions were independent of Mosaic, as Dr. Cameron was engaged solely on the request of Swztech and PINCAN for tasks such as invalidity arguments. Around July 2023, Mosaic and the PO reached a settlement agreement regarding the infringement claim by the PO. PINCAN also did not get involved in that settlement discussion. After that, Mosaic and the PO dismissed their claims against each other in the Central District of

California and ITC. On August 29, 2023, the PO initiated a lawsuit solely against PINCAN in the Eastern District of Texas, for patent infringement and trade dress infringement. Thus, PINCAN decided to file this IPR. PINCAN has no communication with Swztech or Mosaic after it was sued by the PO in the District Court.

Even for Swztech, although it shared a law firm and expert witness with PINCAN during the ITC phase, the initiation of the '340 IPR was an independent action by PINCAN and had no connection with Swztech's instructions or control. The petitioner also lacks the ability to prove the PO's purely speculative conclusion that "Swztech is also an RPI in the '340 IPR.

Additionally, the PO rashly speculates without factual basis, concluding that Mosaic has collaborated/ worked with Dr. Cameron without ever hiring its own expert.. This is unsubstantiated as Mosaic has never paid for Dr. Cameron's services as an expert witness in ITC a was retained by Glacier on behalf of services Swztech and PINCAN in the ITC case. Dr. Cameron prepared and provided her expert report according to the schedule of the ITC case and Glacier's instruction. The PO's unfounded speculation that the time of the settlement and Dr. Cameron's expert report is frivolous. No reasonable person, let alone the petitioner, would believe Dr. Cameron would have the inclination to work or collaborate with Mosaic, an entity that does not compensate her, or be under its control. These are merely conjectures from the PO.

Furthermore, the PO habitually grasps at straws, citing irrelevant matters to substantiate its conjectures, such as communications between PINCAN's and Mosaic's lawyers. Even if, as the PO states, lawyers of two defendants in a litigation discussed their views on the case after

becoming acquainted, this is a normal and mundane event and does not prove Mosaic controlled the '340 IPR. By the PO's logic, defendants or their lawyers in litigation should not interact at all, as any contact would imply control by one over the other, even without consent from the companies PINCAN and Mosaic. It's incomprehensible, except as conjecture, why such an assertion would emerge merely because their lawyers interacted.

Additionally, the PO also mentioned that because PINCAN's corporate representative heard of or was familiar with Storus, Mosaic's wallet product, and Mia Kaminski, it proved that petitioner's lawyers had discussions with Mosaic's lawyers regarding their joint defense, which is even more ludicrous. Both PINCAN and Mosaic sell wallet products, and it is normal in a market like Amazon to be aware of competitor brands or personnel. According to the PO's reasoning, PINCAN's representatives should not have eyes and ears because simply perceiving Mosaic would imply control by Mosaic.

Moreover, it is a fact that PINCAN has never signed any joint defense agreement with Mosaic, nor are they part of a joint defense group. The only connection between PINCAN and Mosaic is that they were co-defendants in the same ITC case. Even if PINCAN and Mosaic are in a joint defense group, this still does not indicate that Mosaic controls PINCAN or PINCAN's actions ('340 IPR). As per case reference *CGQ, Inc. v. Chart Trading Development, LLC*, CBM2016-00048, Paper 12 (PTAB Sept. 12, 2016). In its institution decision, the Board rejected patent owner's argument that the petition should be denied for a failure to name all RPis. The Board indicated that it was not persuaded that patent owner's evidence reasonably establishes or

brings into question that the customer defendants in the related district court litigation are RPIs in the CBM proceeding. “[S]tatus as a co-defendant of a joint defense group is insufficient to establish that the customer defendants had the required control over the filing of the Petition in this proceeding.” The Board indicated that patent owner did not present persuasive evidence that the customer defendants have any influence or control over petitioner’s actions in the CBM proceeding. The mere fact that they are customers of petitioner and share a common litigation counsel does not elevate them to RPIs in the CBM proceeding.

And If, as per the PO's hypothesis, PINCAN or its actions were controlled by Mosaic, why would both spend significant sums on legal representation, and why would PINCAN continue to fight in both ITC and federal court against the PO after Mosaic settled with the PO? These questions undoubtedly undermine the PO's assumptions as baseless.

B. Other Garmin Factors Do Not Support Additional Discovery.

Garmin factor 3, “the ability of the requesting party to generate the requested information without need of discovery” also weighs against additional discovery. Specifically, while the PO emphasizes a desire to discover communications between Mosaic and the Petitioner concerning issues of patent validity, even if such communications exist, they are irrelevant to proving that Mosaic controlled the ‘340 IPR, as these communications are speculated by the PO to be merely about issues of patent validity. Continuing with this assumption, regardless of the content of these communications about patent validity, they can be directly or indirectly obtained through Dr. Cameron's expert report or the ‘340 IPR petition, rather than requiring additional disclosure.

This is because the ultimate goal of the discussions on patent invalidity is to invalidate PO's patent. The PO also mentioned its California case against Mosaic regarding the breach of settlement agreement. However, this litigation is unknown to PINCAN before the PO's contention. Nor PINCAN or its counsel has had any communication with Mosaic or its new counsel. The PO is seeking something that does not exist. If the PO believes there is such communication between PINCAN and Mosaic, it can also obtain this information in its alleged California case. Thus, the PO has the ability to generate equivalent information by other means, and the factor 3 weighs in favor of denying the PO's motion.

Garmin factors 4 and 5, which address whether the discovery requests are "easily understandable" and whether the requests are "sensible and responsibly tailored according to a genuine need," further weigh against additional discovery. For example, PO presented a myriad of unfounded and obscure circumstantial evidence, using a series of terms implying "possibility" to speculate that Mosaic controlled the '340 IPR. However, the PO alleged that its requests "merely seek information about whether and (to the extent not privileged) the nature of any communications between Mosaic and Petitioner with regard to issues of patent validity." Mot. at 9. These requests have no connection with the PO's basis for their motion that whether Mosaic is the RPI. Even though there are some communication between Mosaic and PINCAN (in fact, there is not), such communication also cannot prove PINCAN's relationship with Mosaic. These arguments are very difficult to comprehend. Essentially, PO is hastily listing a bunch of baseless arguments and then using a multitude of speculative statements to shift the burden of piecing

together/arguing these claims onto the PTAB, thereby delaying the proceeding time of this ‘340 IPR. And PO’s requests for production and deposition are particularly overbroad and would require PINCAN to expend its limited in-house resources to undertake a burdensome search and potentially provide a witness for a four-hour deposition that is unlikely to yield any substantive value, as explained supra.

III. CONCLUSION

For the foregoing reasons, the Garmin factors weigh against permitting additional discovery, and the Board should deny PO’s motion.

Dated: April 25, 2024

Respectfully submitted

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CERTIFICATE OF SERVICE

The undersigned certifies pursuant to 37 C.F.R. § 42.6(e) and § 42.105 that on April 25, 2024,
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record for the Patent Owner at the following email addresses:

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