

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RAVIN CROSSBOWS, LLC
Petitioner

v.

MCP IP, LLC
Patent Owner

Case No. IPR2024-00523
Patent No. 9,354,017

**PETITIONER’S REPLY TO PATENT OWNER’S PRELIMINARY
RESPONSE TO THE PETITION FOR *INTER PARTES* REVIEW OF U.S.
PATENT NO. 9,354,017**

Pursuant to the Board's authorization of July 3, 2024, (Ex. 1015), Petitioner hereby submits this reply pursuant to 37 C.F.R. § 42.23.

I. PATENT OWNER FAILS TO ANTEDATE THE DARLINGTON REFERENCE

PO bears the burden of producing evidence antedating the submitted references, each of which qualifies as prior art. 37 C.F.R. § 1.131(b); *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378-80 (Fed. Cir. 2015). Specifically, PO's evidence must address *every feature* of the claim invention. *See Sewall v. Walters*, 21 F.3d 411, 415 (Fed. Cir. 1994). PO cannot swear behind if the evidence fails to demonstrate a prior reduction to practice of each element of the claims. "To demonstrate an actual reduction to practice, the applicant must have . . . constructed an embodiment or performed a process that met *all of the limitations* of the claim." *In re Steed*, 802 F.3d 1311, 1318 (Fed. Cir. 2015).

PO fails to satisfy its evidentiary burden. First, the challenged claims require specific geometric relationships when a bow is in the "drawn" or "brace" conditions, but most of the images provided by PO depict *neither* condition and therefore cannot serve as evidence of the claimed spatial orientations. Second, MCP's attempts to fill these substantive holes through the declaration provided by Mathew McPherson, the sole inventor and CEO of MCP, Inc., is legally flawed. Uncorroborated inventor testimony is strongly disfavored and should not form a basis for denial given its

inherent bias and untrustworthiness. *See, e.g., Apator Miitors ApS v. Kamstrup A/S*, 887 F.3d 1293, 1295 (Fed. Cir. 2018) (“the requirement of corroboration exists to prevent an inventor from ‘describ[ing] his actions in an unjustifiably self-serving manner . . . ‘even the most credible inventor testimony is *a fortiori* required to be corroborated by independent evidence[.]’” (internal citations omitted)). In addition, PO has taken ***contrary positions*** in this proceeding as compared to the district court litigation, where PO originally asserted the earliest reduction to practice was the filing date of the ’017 patent. *See* Ex. 2009 at 10 (MCP’s interrogatory response asserting the earliest reduction to practice of the ’017 patent was September 30, 2009). PO now reverses course to allege a much earlier reduction to practice. *Id.*

For at least these reasons, PO has failed to satisfy its burden to provide evidence showing prior reduction to practice of the claimed invention of the ’017 Patent prior to the Darlington reference, and the Petition should be instituted. *Acrux DDS PTY LTD v. Kaken Phama*, IPR2017-00190, Paper 12 at 12 (PTAB May 1, 2017) (rejecting PO’s evidence of a prior reduction to practice at the institution stage because “Petitioner has not yet been afforded an opportunity to test the sufficiency of Patent Owner’s evidence . . . ***such a dispute is best resolved during trial*** . . . when both parties are afforded an opportunity to challenge the sufficiency of their opponent’s case.”) (emphasis added).

A. PO Fails to Show an Earlier Reduction to Practice of Every Element of the Challenged Claims

i. Limitation 1(f): *“a power cable attached to said terminal and extending toward the second limb, said power cable comprising an elongate straight portion located near said first rotatable member, a capstan portion in contact with said capstan and a terminal portion in contact with said terminal;”*

For Limitation 1(f), PO relies on an image purportedly from a magazine (Ex. 2002) to show the claimed “elongate straight portion” of the power cable extending toward a second limb and “located near said first rotatable member.” Yet PO makes no attempt to show how this “straight portion” is located near a first rotatable member at all, or what this element corresponds to, how the power cable extends toward a second limb (no second limb is shown), or where the claimed “capstan portion in contact with said capstan and a terminal portion in contact with said terminal” are found in this image. POPR at 17-18. PO simply fails to meet its burden to show that Limitation 1(f) is present in the images of Ex. 2002, and that it reduced this limitation to practice prior to the Darlington reference.

ii. Limitation 1(g): *“where, in the brace condition, the power cable wraps around the capstan in a counter-clockwise direction as the power cable is traversed from the elongate straight portion to the terminal portion; and”*

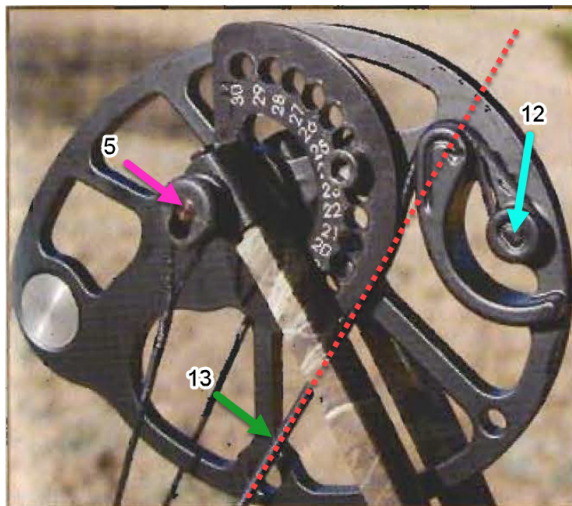
Limitation 1(h): *“when the bow is drawn from the brace condition, the first rotatable member rotates in a clockwise direction.”*

Limitations 1(g) and 1(h) require specific orientations of the power cable *in the brace condition*, and specific rotational directions of a first rotatable member relative to other physical elements in the cam when the bow is *drawn from the brace*

condition. But images in Ex. 2002 show an unstrung bow that is not in a “brace condition” at all, as evidenced by the relaxed orientation of the cam. POPR at 19. Further, PO provides nothing to show how the cam and its elements will move when “drawn from the brace condition,” as required by Limitation (h). The drawn condition is simply not shown in any image provided by PO. POPR at 18-19. With no brace and no drawn condition shown in any of PO’s evidence, PO fails to meet its burden to show these limitations were reduced to practice prior to the Darlington reference.

iii. Limitation 2: “*wherein, in the brace condition, the elongate straight portion defines a plane, wherein said first axis and said terminal are located on opposite sides of said plane.*”

PO again relies on the same image of an unstrung cam from Ex. 2002 to teach this limitation for Claim 2 (and similarly, Claim 15). POPR at 23-24:



Here again, Limitation 2 requires a specific orientation between a “first axis,” an “elongate straight portion,” and a “terminal” when the cam is in the **brace**

condition. But PO provides no evidence to show the cam is in the brace condition, and the image itself confirms that no drawstring is present, making a brace condition impossible. Thus, any purported evidence about the orientations of specific elements when **not** in the brace condition cannot meet PO's burden to show the orientation of these elements in the claimed "brace condition."

iv. Limitation 3: "***wherein, in the drawn condition, the capstan is located closer to the elongate straight portion than the terminal.***"

Claim 3 (and similarly, Claim 15) require specific orientations among elements when the bow is in the **drawn** condition (i.e., when the drawstring has been pulled back), causing the cam elements to rotate away from the brace condition. PO admits the image does not show the cam in a drawn condition. POPR at 24-25. Instead, PO submits *post-hoc* testimony from its declarant that speculates as to how these elements will move when the bow is drawn. *Id.* PO provides no actual evidence that it reduced this limitation to practice, and fails to meet its burden to swear behind the Darlington reference as a result.

II. CONCLUSION

PO has failed to meet its burden to show that each element of the challenged claims was reduced to practice before the publication of the Darlington reference. The Board should institute to allow Petitioner to challenge the veracity of PO's proffered evidence, including the testimony of its declarants, and the expert testimony that attempts to fill-in the missing elements with rank speculation.

Respectfully submitted,

ERISE IP, P.A.

BY: /s/ Adam P. Seitz

Adam P. Seitz, Reg. No. 52,206

Adam M. Sandwell, Reg. No. 72,484

Chris R. Schmidt, Reg. No. 63,982

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned certifies that on July 15, 2024, a copy of PETITIONER'S PRELIMINARY REPLY was served in its entirety by filing through the Patent Trial and Appeal Board End to End System, as well as via electronic mail, upon the following attorneys of record for the Patent Owner.

Joshua A. Griswold, Reg. No. 46,310
Kenneth Hoover, Reg. No. 68,116
Carl E. Bruce, Reg. No. 54,007
Mathew A. Colvin, Reg. No. 66,843

Email: IPR56402-0006IP1@fr.com

Respectfully submitted,
ERISE IP, P.A.

BY: /s/ Adam P. Seitz
Adam P. Seitz, Reg. No. 52,206
Adam.Seitz@eriseip.com
Erise IP, P.A.
7015 College Blvd., Suite 700
Overland Park, KS 66211
P: (913) 777-5600
F: (913) 777-5601

COUNSEL FOR PETITIONER