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. IPR2024-00524
Patent No. 9,909,831

PETITIONER'S REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE TO THE PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 9,909,831

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 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).

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 '831 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, said power cable extending from said terminal, wrapping around said capstan and extending toward the second limb;"***

Limitation 1(g): "***wherein the capstan is located between the cam track and the terminal, and in the brace condition, the power cable wraps around the capstan in a first rotational direction as the power cable is traversed toward the terminal; and***"

Limitation 1(h): "***when the bow is drawn from the brace condition, the first rotatable member rotates in a second rotational direction that is opposite the first rotational direction*** . . ."

For Limitations 1(f), PO relies on an image purportedly from a magazine (Ex. 2002) to show the claimed power cable extending from a terminal, wrapping around a capstan, and extending toward a second limb. Yet PO makes no attempt to show how the power extends toward the second limb because no second limb is shown at all. POPR at 17-18.

Limitation 1(g) requires specific orientations of the power cable ***in the brace condition***, and Limitation 1(h) requires specific rotational directions of the first rotatable member relative to other physical elements when the bow is ***drawn from the brace condition***. But the images in Ex. 2002 show an unstrung bow that is not in a "brace condition" at all because the cam is in a relaxed position. PO provides nothing to show, and thus has no credible way to show, how the cam and its elements will move when "drawn from the brace condition," as required by further Limitation 1(h). The drawn condition is simply not shown in any image provide by PO. POPR at 18-19. With no brace condition and no drawn condition shown in PO's evidence, PO fails to meet its burden to show how Limitations 1(f)-(h) were reduced to practice prior to the Darlington reference.

ii. Limitation 11(f): "***wherein, in the brace condition, the axle plane divides the first rotatable member to a first part and a second part, the capstan and***

the terminal located in the first part, the drawstring exit location located in the second part, and"

Limitation 11(f) requires specific orientations between the capstan and terminal when the bow is in the brace condition. POPR at 19-20. But PO provides only a blurry image to suggest that these limitations are met and there is no way to determine from PO's image that the capstan and terminal limitations are in the proper orientation, nor any expert testimony to support this argument. POPR at 19-20. PO has not met its burden to show this limitation was reduced to practice before the Darlington reference.

iii. Limitation 11(g): "***and a distance between the terminal and the axle plane is greater than a distance between the capstan and the axle plane.***"

Limitation 11(g) again requires specific orientations between the capstan and terminal when the bow is in the brace condition. But PO now switches to a new image that no longer shows the opposite terminal that forms the claimed "axle plane," and therefore PO's annotations are not supported by independent evidence to demonstrate these orientations were present in its purported reduction to practice. POPR at 38.

iv. Limitation 14: "***wherein, in the drawn condition, said power cable comprises an elongate straight portion located near said first rotatable member, the capstan located closer to the elongate straight portion than the terminal***."

This limitation requires 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 29-30. 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 therefore provides no independent 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,

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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.

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