

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ceva Santé Animale S.A.,
Egg-Chick Automated Technologies S.A.S, and
Ceva Animal Health, LLC
Petitioners,

v.

Targan, Inc.,
Patent Owner.

Case IPR2024-00595

U.S. Patent No. 10,806,124

**PETITIONERS' OPPOSITION TO PATENT OWNER'S
MOTION TO STRIKE**

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Cases

Belden Inc. v. Berk-Tek LLC,
805 F.3d 1064 (Fed. Cir. 2015)..... 1, 2, 5

Hulu v. Innovations,
No. IPR2018-00582, 2019 WL 6790791 (P.T.A.B. Aug. 5, 2019).....5, 6

Other Authorities

2019 Consolidated Practice Trial Guide 1, 7

Rules

37 C.F.R. § 42.23(b) 2

TABLE OF ABBREVIATIONS

Guide	Patent Trial and Appeal Board Consolidated Trial Practice Guide, November 2019
ID	Institution Decision (Paper 9)
Keener Declaration	Exhibit 2002, Declaration of Kevin M. Keener, Ph.D., P.E.
LeCroy Declaration	Exhibit 1008, Declaration of Shawn Lecroy
Motion	Patent Owner's Motion to Strike (Paper 22)
Petitioners	Petitioners Ceva Santé Animale S.A., Egg-Chick Automated Technologies S.A.S, and Ceva Animal Health, LLC's
Petition	Petitioners' Petition (Paper 1)
PO	Patent Owner Targan, Inc.
POR	Patent Owner's Response (Paper 16)
Reply	Petitioners' Reply (Paper 19)

*Citations to exhibits are to the exhibit page number.

**Emphases added unless otherwise noted throughout this Opposition.

I. INTRODUCTION

Patent Owner submitted a 120-page declaration of Dr. Kevin Keener with its Patent Owner Response. In support of its Reply, Petitioners submitted a declaration from Mr. Shawn LeCroy which directly rebutted at least 10 specific factual comments and/or diagrams in the Keener Declaration. The PTAB's Guidelines expressly state that a party may submit "rebuttal evidence in support of its reply" as Petitioners have done here. Guide, 73. As such, there is no justification for excluding any part of the LeCroy Declaration or the Reply and Patent Owner's Motion should be denied.

II. PETITIONERS' REPLY AND SUPPORTING DECLARATION ARE PROPER

A. Petitioners are permitted to submit rebuttal evidence

The 2019 Consolidated Practice Trial Guide states, a party "may submit rebuttal evidence in support of its reply," citing *See Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1077–78 (Fed. Cir. 2015). Guide, 73. In *Belden*, as here, no expert declarations were submitted with the original Petition. 805 F.3d at 1071. As the Federal Circuit observed, "[n]o rule requires a Petition to be accompanied by any declaration, let alone one from an expert guiding the Board as to how it should read prior art." *Id.* at 1079. Here, as in *Belden*, Patent Owner argues that the Petitioners' submission of an expert declaration in support of its reply violates the

Board's rules. Petitioners invite the Board to reach the same conclusion it reached in *Belden*. There, the "Board found no violation, concluding that Mr. Baxter's declaration 'fairly responds to Mr. Clark's declaration' and is 'generally ... in fair reply to Mr. Clark's declaration and/or Belden's response to the revised petition.'" (internal citation omitted). 805 F.3d at 1078. Indeed, in affirming the Board's admission of the Baxter declaration, the Federal Circuit noted that "[e]ach of the points that Mr. Baxter made in his declaration responds to a statement made in Mr. Clark's declaration." *Id.* Similarly here, each of the points made by Mr. LeCroy after the introduction and background responds to statements made by Dr. Keener.

Finally, the *Belden* opinion pointed out that "[e]vidence admitted in rebuttal to respond to the patent owner's criticisms will commonly confirm the prima facie case. That does not make it necessary to the prima facie case." 805 F.3d at 1079. The same is true here.

B. Structure of the LeCroy Declaration

After introducing Mr. LeCroy's background (§§ 4-11) and a general explanation of how chick hatcheries operate (§§ 12-21), Mr. LeCroy responds to at least 10 specific statements or diagrams from the Keener Declaration as summarized below.

Keener Declaration	LeCroy Declaration
Keener's 1st inaccurate diagram depicting Gershman, ¶ 40 (see LeCroy ¶ 22)	¶¶23-26: LeCroy rebuttal
Keener wrongly states Gershman plate never moves while supporting a chick, ¶ 40 (see LeCroy ¶ 27)	¶ 28: LeCroy rebuttal
Keener wrongly states that Gershman requires a full stop on conveyor before plate, ¶ 43 (see LeCroy ¶ 29)	¶ 30: LeCroy rebuttal
Keener overstates difficulties in chick management and chick injury, ¶ 174 (see LeCroy ¶ 31)	¶ 32: LeCroy rebuttal
Keener's 2nd inaccurate diagram depicting Gershman, ¶169 (see LeCroy ¶ 33)	¶ 34: LeCroy rebuttal
Keener overstates need for holding area and chick droppings problem, ¶60 (see LeCroy ¶ 35)	¶¶36-37: LeCroy rebuttal
Keener overstates Yavnai poles keeping chicks on moving platform, ¶ 54 (see LeCroy ¶ 39)	¶ 40: LeCroy rebuttal
Keener overstates risk of chick injury from Yavnai poles, ¶ 101 (see LeCroy ¶ 41)	¶ 42: LeCroy rebuttal
Keener overstates chick restraint by Yavnai poles and chick rotation issue, ¶ 178 (see LeCroy ¶ 43)	¶¶44-46: LeCroy rebuttal
Keener overstates risk of chick injury in Goodwin-Pierre system, ¶ 184 (see LeCroy ¶ 50)	¶ 51: LeCroy rebuttal

In summary, the LeCroy Declaration is narrowly tailored to directly respond to arguments raised by selected statements in the Keener Declaration as in *Belden*.

C. The LeCroy Declaration fairly responds to Dr. Keener over whether Gershman discloses a chick supported by a moving platform

The central issue in Patent Owner's motion relates to Gershman's disclosure of a moving platform supporting a chick as claimed. Motion, pp. 1-6.

First, the Petition discussed Gershman in multiple places and cited to Gershman. For example, the Petition stated, "[t]he system includes a moving plate on which a chick is placed. (Ex. 1003, page 3 (1 stage).)" Page 9. The cited page 3, stage 1, item 2 of Gershman in turn states "***Chickens are placed on a moving plate ...***" The Petition later again stated that "Gershman discloses a moving plate" and that "movement of the plate transports the chick from a first location to a second location via a mechanical activator. (Ex. 1003, page 5 (Materials and Methods).)" Page 22. The cited page 5 in Gershman's Materials and Methods section states, "Chickens were placed on plate manually and was [sic.] pushed down from a height of 20 cm ***on the shock absorbers*** (Fig.3)." Patent Owner's Motion (page 3) also cites this Gershman sentence but inserts ellipses instead of keeping the phrase "shock absorbers" at the end of the sentence. Yet PO later complains that LeCroy's mention of shock absorbers introduces a new argument. The Institution Decision also described Gershman as disclosing a "moving plate" and that "the chick was "placed on plate manually" and the plate "pushed down

from a height of 20 cm [8"] ***on the shock absorbers*** (Fig. 3)." ID, 7-8. The Reply is also permitted to address issues discussed in the ID. Guide, 73.

In response to the *prima facie* case presented in the Petition and supportive statements in the Institution Decision, Patent Owner offered the Declaration of Dr. Keener. Dr. Keener testified that Gershman did not disclose a chick supported on a moving plate. Dr. Keener instead took the extreme position that the chick was *only* supported by the moving plate when the plate was stationary. EX 2002, ¶¶ 40, 42. Dr. Keener also prepared misleading diagrams of the Gershman system in support of his testimony. EX 2002, ¶¶ 40, 169.

The LeCroy Declaration and Petitioner's Reply both fairly responded to Dr. Keener's positions and diagrams with Mr. LeCroy offering rebuttal evidence opposing Dr. Keener's theories. EX 1008, ¶¶ 22-30 and 32-34. These rebuttal arguments included citation to the evidence originally cited in the Petition *and* also cited to additional portions in Gershman (such as the springs attached to the plates) that were inconsistent with Dr. Keener's theory. The fact that such arguments may bolster arguments originally made in the Petition is not a reason to exclude them. See, *Belden*, 805 F.3d at 1079 ("[e]vidence admitted in rebuttal to respond to the patent owner's criticisms will commonly confirm the *prima facie* case.").

Patent Owner relies on *Hulu v. Innovations*, No. IPR2018-00582, 2019 WL 6790791, at *11 (P.T.A.B. Aug. 5, 2019) in support of its arguments. Pages 3, 6.

In *Hulu*, unlike in this case, the Board had already found in the Institution Decision that the Petition contained no explanation as to how a prior art reference read on a claim feature. 2019 WL 6790791 at *10. Petitioner then cited to cross-examination testimony, a new expert declaration, and a new book to argue why this claim feature was present in the prior art. *Id.* at *11. Although the new evidence was excluded, the Board also ultimately addressed the new arguments but found them unpersuasive. *Id.* By contrast, Petitioner here has presented a *prima facie* case that Gershman discloses a chick supported on a moving plate in the Petition, the ID agreed with Petitioner, and unlike in *Hulu*, the LeCroy rebuttal evidence directly responds to specific arguments from Patent Owner's expert.

D. LeCroy's comments on conveyor speed are also proper

Patent Owner also complains about Mr. LeCroy's statement that a system built around Gershman would have controlled the speed of the conveyor supplying chicks to Gershman's plate. Page 7. The speed of the conveyor is not claimed in the '124 patent and not needed for Petitioner's *prima facie* case of obviousness. Nonetheless, Dr. Keener asserted that it would be difficult to make an industrial scale version of Gershman (which is incidentally also *not* claimed) because of alleged problems with chick traffic control and chick traffic management. Mr. LeCroy fairly rebutted Dr. Keener by addressing the known level of chick traffic management in hatcheries.

E. The Motion does not discuss most of Mr. LeCroy's Declaration

Patent Owner's Motion discusses only a few of the many substantive points addressed by Mr. LeCroy: LeCroy's citation to Gershman's springs and shock absorbers as evidence that a chick is on a moving plate in response to Dr. Keener's argument that Gershman only discloses a chick on a stationary plate, and Mr. LeCroy's point that it was well known to control conveyor speed in hatcheries in response to Dr. Keener's argument that it would be unworkable to supply chicks to Gershman's plate. These portions of the LeCroy Declaration are only found in paragraphs ¶¶ 27-30 and ¶¶ 33-34. The remaining paragraphs summarized in the table above are not specifically addressed by the Motion. Indeed, ¶¶ 38-51 of the LeCroy Declaration relate to Yavnai, Pierre and Goodman, not Gershman. Thus, Patent Owner fails to present any argument for excluding most of the LeCroy Declaration other than the declaration not being submitted with the Petition.

III. CONCLUSION

For the foregoing reasons, Petitioners ask that Patent Owner's Motion to Strike be denied. The appropriateness and weight of all evidence will best be understood during consideration of the entire record. Petitioners also ask that Patent Owner's request to submit a supplemental declaration with its Sur-Reply be denied and that existing Trial Practice Guide word limits be adhered to.

IPR2024-00595
Petitioners' Opposition to
Patent Owner's Motion to Strike

Dated: March 12, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that the foregoing Petitioners' Opposition to Patent Owner's Motion to Strike was served on March 12, 2025 by e-mail to:

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