

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

2985, LLC d/b/a MOUNTAIN VOYAGE COMPANY, LLC,
Petitioner

v.

THE RIDGE WALLET LLC
Patent Owner

Case IPR2024-00692
Patent 10,791,808

PATENT OWNER'S PRELIMINARY SUR-REPLY

PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
Ex. 2001	Declaration of Gina A. Johnson in Support of Motion for Admission <i>Pro Hac Vice</i>
Ex. 2002	Final Initial Determination in ITC Investigation No. 337-TA-1355 dated March 15, 2024 (Public Version)
Ex. 2003	Declaration of Daniel Kane in ITC Investigation No. 337-TA-1355 dated September 25, 2023 (Redacted)
Ex. 2004	Mountain Voyage Final Invalidity Contentions in District of Colorado Case No. 23-cv-00407, dated June 11, 2024.
Ex. 2005	U.S. Patent No. 5,038,985 to Chapin.
Ex. 2006	U.S. Patent No. 7,334,616 to Kaminski
Ex. 2007	Non-Confidential Excerpts from Plaintiff The Ridge Wallet LLC's Responses and Objections to Defendant 2985, LLC d/b/a Mountain Voyage Company LLC's First Set of Interrogatories dated January 19, 2024
Ex. 2008	A 28-year-old sold over \$5 million worth of wallets on Amazon in the last 12 months. He shares the first steps he took and how he went from breaking even to profiting over \$100,000 per month. Kathleen Elkins, <i>Business Insider</i> , Mar 9, 2023.
Ex. 2009	General Exclusion Order in International Trade Commission Investigation No. 337-TA-1355.

I. INTRODUCTION

Petitioner's Reply to Patent Owner's Preliminary Response ("Reply," Paper 11) does not alter the correct outcome here: denial of the Petition (Paper 1). Petitioner's belated arguments on the two issues it was permitted to address (discretionary denial and secondary considerations of non-obviousness) do not remedy its facially deficient petition. Activities that have occurred *since* the filing of the Patent Owner Preliminary Response (Paper No. 9), as well as Petitioner's continued tactic to hide information from the Board of which it is unquestionably aware (*see, e.g.*, Ex. 2008 regarding Petitioner's copying), further demonstrate why the Petition is deficient and should be denied.

II. DISCRETIONARY DENIAL UNDER 35 U.S.C. § 325(d)

Petitioner moved to join instituted IPR number IPR2024-00340 (the "00340 IPR"). *See* IPR2024-01264. The Office will already be considering Petitioner's Ground 1 theory (regarding Kane (Ex. 1006) and Beckley (Ex. 1007)) in the 00340 IPR. The other secondary references in the 00340 IPR fill the same gaps in Kane (Ex. 1006) that Petitioner uses Pelz (Ex. 1008) and Matthews (Ex. 1009) for here. Yet Petitioner chose not to address the cumulative nature of those references in its Reply. Given Petitioner's Motion to Join the 00340 IPR, the instant proceeding has indeed become a serial attack, by the same Petitioner, using Grounds whose

primary references have all been considered and with partially overlapping secondary references. *Contrast* Paper 1 at 91. Petitioner's attempt to piggyback on the Board's reasoning in the 00340 IPR with regard to material error (Paper 11 at 3), while not addressing its now untrue statement about serial petitions, further demonstrates that the Board should deny the instant IPR in favor of the 00340 IPR.

Petitioner belatedly identifies purported differences between references used in prosecution (Chapin (Ex. 2005) and Kaminski (Ex. 2006)) and the references in the Petition. Paper 11 at 1-2. Its arguments are not compelling.

Petitioner argues that Chapin (Ex. 2005) requires the use of a screw, where Beckley, Pelz, and Matthews do not. Paper 11 at 2. But the claims of the '808 Patent of course do not require (or prohibit) the use of a screw or other fastener. *See generally* Ex. 1001. Petitioner also makes a halfhearted argument that Chapin is related to a tape measure clip, whereas some of the other prior art is related to clips for card holders. Paper 11 at 2. Petitioner undoes that argument in its next statement, where it acknowledges that at least one of the purportedly invalidating, non-cumulative prior art references (Pelz) is directed to a clip for microphone hearing units (i.e., nothing to do with card holders). *Id.* The argument about Chapin being directed to clips for something other than card holders can be dismissed. And, of course, Kaminski (Ex. 2006) is plainly directed to removable

clips for card holders that do not require a screw.

Petitioner asserts that Pelz and Matthews are not cumulative of Kaminski (Ex. 2006). As above, there is nothing in the claims that requires or prohibits that removal of a clip can occur “without disassembling the unit body.” Paper 11 at 2. In the preferred embodiments of the ‘808 Patent, at least some disassembly of the “unit body” is required to remove a money clip. Ex. 1001 at Fig. 13. With regard to Beckley, Patent Owner cannot make sense of the sentence attempting to demonstrate material differences between Beckley and Kaminski (regarding “sliding interposition”). Paper 11 at 2. There is no sliding arrangement claimed in the ‘808 Patent, and in the preferred embodiment the clip interfaces with two plates of a wallet body. Petitioner does not make a compelling argument of non-cumulativeness between its secondary references and Kaminski.

III. SECONDARY CONSIDERATIONS

Even given a second chance to argue about secondary considerations, Petitioner does not carry its burden to establish that the Petition should be instituted under 35 U.S.C. § 314. Its belated arguments read like the arguments of a non-burden-bearing party, not a party trying to carry a burden to “show” that the instant Petition should be instituted. *Id.*

Petitioner does nothing to undermine Patent Owner’s assertion of the

“astronomical success” Patent Owner has experienced, tied to the timing of the filing of the application that led to U.S. Patent No. 10,791,808, shows the non-obvious nature of the inventions claimed therein. Its arguments about nexus are an improper burden shifting to Patent Owner, and demonstrate exactly how deficient the Petition actually was.

Petitioner also does not address the rampant copying of the ‘808 Patent. Indeed, a readily available article about Petitioner itself confirms that Petitioner’s entire business model is predicated on copying (stealing) Patent Owner’s design and knocking it off at a lower price:

Buying 1,000 wallets on his credit card, labeling them at home, and shipping them to Amazon

Reeves found a supplier through Alibaba who could manufacture the wallet he wanted, which, at the time, was a very similar style to a competitor wallet, he said: "I just emulated their product."

For his first order, he bought 1,000 units. It cost him about \$7 a wallet at the time. Plus, shipping cost another \$3,000. That initial step was nerve-wracking, he added: "I was sending a random person in China \$10,000."

Ex. 2008. Indeed, this entire article, which was written in conjunction with an interview given by Petitioner’s founder, is unmentioned in the Petition or the “second bite” reply, but demonstrates that Petitioner’s entire business is built on

copying Patent Owner's product. There can be no clearer evidence of copying, and no better evidence of secondary considerations, than Petitioner's own copying and validation of the '808 Patent. The fact that Petitioner preferred to hide this evidence from the Board certainly warrants denial under 35 U.S.C. §314.

Petitioner also did not address the fact that the United States International Trade Commission recently granted Patent Owner a General Exclusion Order based on infringement of the '808 Patent, recognizing Patent Owner's domestic industry in connection with the '808 Patent. Ex. 2009. This finding is a secondary consideration demonstrating non-obviousness, as no party made a compelling invalidity defense in that case.

Petitioner continues to shirk its burden to show that institution is warranted, preferring not to address the information of which it is and has been aware demonstrating compelling secondary considerations of non-obviousness of the '808 Patent. Its Reply confirms that denial is warranted.

IV. CONCLUSION

Petitioner's Reply highlights the deficiencies in its Petition, and certainly does not alter the correct outcome here: Petition denial for substantive and/or discretionary reasons.

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Date: August 9, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §42.6(e), the undersigned certifies that on August 9, 2024, a complete and entire copy of this Patent Owner's Preliminary Sur-Reply was provided, via email, to the Petitioner by serving the correspondence address of record as follows:

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