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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PENUMBRA, INC.,
Petitioner,

v.

RAPIDPULSE, INC.,
Patent Owner.

IPR2024-01261
Patent 11,406,402 B2

Before JOHN G. NEW, DAVID COTTA, and JAMIE T. WISZ,
Administrative Patent Judges.

WISZ, *Administrative Patent Judge*.

ORDER
Granting Patent Owner's Unopposed Motion to Submit Supplemental Information
37 C.F.R. § 42.123(b)

I. INTRODUCTION

Penumbra, Inc. ("Petitioner") filed a Petition (Paper 1, "Pet.") requesting an *inter partes* review of claims 1–20 of U.S. Patent No. 11,406,402 B2 (Ex. 1001, "the '402 patent"). We instituted trial on February 21, 2025. Paper 7. Patent Owner filed a Response on May 30, 2025. Paper 15. On August 13, 2025, the Board received an e-mail from RapidPulse, Inc. ("Patent Owner") requesting authorization to file a motion to submit supplemental information under 37 C.F.R. § 42.123(b). Ex. 3001. In the e-mail, Patent Owner indicated that Petitioner does not oppose the request. *Id.* On August 14, 2025, we authorized Patent Owner to file an unopposed motion to submit supplemental information. *Id.*

Patent Owner moves to submit as supplemental information the European Patent Office ("EPO") Opposition filed by Petitioner (Ex. 2035, "the European Opposition"), which opposes Patent Owner's European Patent No. 3823686 ("the European patent"). Paper 19 ("Mot."). Patent Owner represents that Petitioner does not oppose this motion. Mot. 1. For the reasons set forth below, we *grant* Patent Owner's Motion.

II. ANALYSIS

To succeed, a motion to submit supplemental information pursuant to 37 C.F.R. § 42.123(b) must meet two requirements. First, the motion must show why the supplemental information reasonably could not have been obtained earlier. 37 C.F.R. § 42.123(b). Second, the motion must show that consideration of the supplemental information would be in the interests-of-justice. *Id.* As the moving party, Patent Owner bears the burden of proof that it is entitled to the relief requested in the motion. 37 C.F.R. § 42.20(c).

Patent Owner asserts that it could not reasonably have submitted the supplemental information earlier because the European Opposition was not filed until July 29, 2025. Mot. 1; Ex. 2035, 1. With respect to the second requirement of Rule 42.123(b), Patent Owner contends that considering the supplemental information would be in the interests-of-justice for three reasons. First, the opposed European patent and the '402 patent both claim priority to the same priority applications – U.S. Application No. 16/516,232 (Ex. 1001, code (63); Ex. 2035, 2) and U.S. Provisional Application Nos. 62/701,086 and 62/750,011 (Ex. 1001, code (60), Ex. 2035, 2). Mot. 1–2. Second, the European Opposition and the Petition rely on the same Yang reference and the U.S. Patent equivalents of the Ofek and Mullins references. *Id.* at 2. Third, Patent Owner contends that, "Petitioner's arguments about the teachings of Yang, Ofek, and Mullins in the European Opposition contradict its arguments in the Petition with respect to the '402 patent's claim limitation [1-G] 'control fluid flow in and out from the distal end of the catheter.'" *Id.* at 2–3. Further, according to Patent Owner, "entry of the European Opposition into the record now will permit Petitioner to address the opposition in its Reply, and Patent Owner to address the European Opposition in its Sur-Reply." Mot. 4.

We are persuaded that Patent Owner has met its burden of satisfying the requirements of 37 C.F.R. § 42.123(b). We agree that Patent Owner could not have submitted the supplemental information earlier (until Petitioner filed the European Opposition), and that consideration of the supplemental information is in the interests-of-justice.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner's Unopposed Motion to Submit Supplemental Information is *granted* and Exhibit 2035 is deemed filed.

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