

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STARA S.A.-INDÚSTRIA DE IMPLEMENTOS AGRÍCOLAS,

Petitioner,

v.

AGCO CORPORATION,

Patent Owner.

Case IPR2024-01459

Patent 11,665,989

**PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO
FILE EXHIBIT AND TO AMEND PAPERS**

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EXHIBIT LIST

Petitioner's Exhibits

Exhibit	Description
1001	U.S. Patent No. 11,665,989 B2 (the '989 Patent)
1002	Declaration of Dr. Paul R. Weckler, PhD
1003	Curriculum Vitae of Paul R. Weckler, PhD
1004	Excerpts of the File History of the '989 Patent
1005	U.S. Patent Application Publication 2015/0230391 to <i>Houck</i>
1006	U.S. Patent No. 9,031,749 to <i>Hubalek</i>
1007	U.S. Patent No. 8,573,319 to Casper et al. (" <i>Deere I</i> ")
1008	EP 2335465 to <i>Amazonen</i> , English Translation
1009	DE 102006034798 to Poettinger Landtechnik GMBH, English Translation (" <i>Poettinger</i> ")
1010	U.S. Patent Application Publication 2014/0209335 A1 to Casper, et al. (" <i>Deere II</i> ")
1011	EP3192343 to Poettinger Landtechnik GMBH, English Translation (" <i>Poettinger II</i> ")
1012	KR101877062 B1 to LS MTRON (" <i>KR '062</i> ") (English Translation)
1013	U.S. Patent Application Publication No. 2016/0302350 to Kinzenbaw (" <i>the '350 Application</i> ")
1014	U.S. Patent No. 8,567,517 to Friggstad (" <i>the '517 Patent</i> ")
1015	U.S. Patent Application Publication 2014/0069670 to <i>Friesen</i>
1016	EP 2335465 to <i>Amazonen</i> (Original)
1017	DE 102006034798 to Poettinger Landtechnik GMBH (Original)
1018	EP 3192343 to Poettinger Landtechnik GMBH (Original plus Espacenet Translation)
1019	KR101877062 B1 to LS MTRON (" <i>KR '062</i> ") (Original)
1020	Certificate of translation (affidavit) for DE102006034798
1021	Certificate of translation (affidavit) for EP3192343
1022	Certificate of translation (affidavit) for KR101877062 B1
1023	Declaration of Brian A. Tollefson in Support of Motion
1024	KR 10-2014-0058776 (Korean language)

Patent Owner's Exhibits

Exhibit	Description
2001	Declaration of Douglas S. Prairie, P.E., with Appendices
2002	AGCO Press Release
2003	Farm Journal (website)
2004	USPTO Webpage Printout, listing Documents & transaction history for the U.S. Patent No. 11,665,989
2005	File History for the U.S. Patent No. 11,665,989
2006	Cambridge Dictionary of Science and Technology
2007	Antonyms of Transverse (website)
2008	What is the opposite of transverse? (website)

I. INTRODUCTION

Petitioner's Grounds 1, 3, 4, and 6 rely on KR101877062 B1 ("*KR'062*")¹, which is not prior art. *See* POPR, Paper 8, pp. 22-25. Now aware of its fatal flaw, Petitioner attempts a second bite at the apple by seeking leave to add *KR'776* as prior art and to amend its Petition and Declaration to cite thereto. In support of its request, Petitioner alleges that Petitioner is merely (1) submitting rebuttal evidence or supplemental information or (2) correcting a clerical error. Neither is true. The Board should deny Petitioner's Motion.

II. PETITIONER FAILED TO MEET ITS BURDEN

First, Petitioner argues Petitioner is entitled to seek leave to file a reply to arguments raised in Patent Owner's Preliminary Response. *See* Petitioner's Motion, Paper 10, pp. 2-3 (citing 37 C.F.R. § 42.108(c)). Yet, Petitioner's Motion does not ask for the opportunity to Reply. Instead, Petitioner asks for leave to file a copy of *KR'776* (with a verified English translation thereof—which Petitioner has not yet obtained) and to **amend** its Petition and accompanying Declaration to reference the new exhibit. *See* Petitioner's Motion, Paper 10, p. 3 (emphasis added). Petitioner does not cite any precedent for such a request because there is none. As

¹ Petitioner erroneously leaves out Ground 4 when Petitioner says, "Grounds 1, 3, and 6, rely, at least in part, on a Korean Patent Publication..." *See* Petitioner's Motion, Paper 10, p. 1.

the Board well knows, once a petition is deficient, it is always deficient. *See, e.g., Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (“[u]nlike district court litigation—where parties have greater freedom to revise and develop their arguments over time and in response to newly discovered material—the expedited nature of IPRs bring with it an obligation for petitioners to make their case in their petition to institute.”); *Sweegen, Inc. v. Purecircle SDN BHD*, PGR2020-00070, Paper 10, at 7 (P.T.A.B. Sept. 22, 2020) (Order Denying Petitioner’s Motion to Correct Clerical Mistakes) (“A petition seeking *inter partes* review should be complete at the time it is filed in connection with the asserted grounds of unpatentability and the evidence and analysis offered in support thereof. *See* 35 U.S.C. § 312(a)(3); 37 C.F.R. §§ 42.22, 42.104(b).”). Petitioner cannot add a new piece of prior art to make a case it should have made in the Petition.

Indeed, Petitioner’s cited case, *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 (P.T.A.B. Dec. 20, 2019), confirms “at the institution stage, **the petition must identify**, with particularity, evidence sufficient to establish a reasonable likelihood that the reference was publicly accessible before the critical date of the challenged patent and therefore that there is a reasonable likelihood that it qualifies as a printed publication.” *Id.* at 13 (emphasis added). Tellingly, and unlike here, all of the exhibits on which the *Hulu* Board relied to conclude that the petitioner had established a reasonable likelihood that the reference was a printed

publication were submitted by petitioner with its petition. *Id.* at 19-21.

III. THIS IS NOT A CLERICAL ERROR

Next, Petitioner alleges, “the reason for the omission was clerical in nature.” Petitioner’s Motion, Paper 10, p. 3. Not so. By Petitioner’s own admission, the alleged “error” was made by lead counsel himself, who “is forced to wear many hats.” *Id.* As the Board has concluded, “a ‘clerical error’ may occur when a clerk who is not charged with exercising discretion fails correctly to follow instructions, but ‘[i]f the error had indeed been due in some measure to the party in interest or the supervisor—those upon who a duty did devolve ‘to exercise original thought or judgment’ in the matter—then making a correction would amount to more than correcting a ‘clerical error.’” *Zhongshan Broad Ocean Motor Co., Ltd. v. Nidec Motor Corp.*, IPR2014-01122, Paper 20, at 13 (P.T.A.B. Jan. 21, 2015).

In *Zhongshan*, the Board denied the petitioner’s request to submit corrected exhibits when the petitioner realized it failed to include an affidavit attesting the accuracy of the translation, which was pointed out in the patent owner’s preliminary response. *Id.* at 11-14. In its decision, the Board emphasized, “[t]he standard for excusing a filing error under 37 C.F.R. § 42.104(c) is not mere unintentionality or inadvertence, but instead requires a showing that a ‘clerical or typographical mistake’ occurred.” *Id.* at 12. Even worse than *Zhongshan*, Petitioner here wholly failed to include *KR’776* or a translation thereof with the necessary affidavit.

Contra Hulu, IPR2018-01039, Paper 29 at 13. Indeed, Petitioner has in fact admitted it still has not obtained a translation of that family member such that the necessary translation and certification are not presently available to Petitioner, much less AGCO or the Board. *See* Tollefson Declaration, Ex. 1023, at p. 2, ¶ 5.

Petitioner’s attempt to rationalize his “mix[] up” only confirms this was not a clerical error—instead, Petitioner selected, accidentally or otherwise, to use *KR’062* rather than *KR’776* without considering the implications of the relevant dates thereof. *Id.* at p. 2, ¶ 6 (“I did not make a decision to rely on a patent rather than a patent application publication”). Still further, Petitioner obtained a translation of *KR’062* and an Expert Declaration based thereon—never once recognizing or understanding that *KR’062* is treated differently under 35 U.S.C. § 102 than *KR’776*.

IV. PATENT OWNER WILL BE PREJUDICED

AGCO has already expended significant resources replying to the Petition—including to research and respond to Petitioner’s Grounds 1, 3, 4, and 6, which fail since *KR’062* is not prior art. Now, Petitioner asks that AGCO expend additional resources to substantively respond to what amounts to a new prior art reference that was not previously cited. Certainly, AGCO would be forced to expend additional resources for an amended Preliminary Response, including an updated expert report—all because of Petitioner’s failure to rely on prior art. Just because AGCO

responded to each ground and demonstrated why there is no reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim—at least because Petitioner failed to cite prior art—does not mean Petitioner gets to try again and force AGCO to respond again.

Incredibly, Petitioner further argues that no continuance is needed. *See* Petitioner’s Motion, Paper 10, pp. 4-5. Stated differently, Petitioner seeks to impose burdens on AGCO (to hurriedly file a supplemental patent owner’s preliminary response) and the Board (to hurriedly consider AGCO’s supplemental preliminary response and issue its institution decision by March 27, 2025) all because of Petitioner’s failure to cite prior art—yet, to date, Petitioner has not provided a translation of its new reference (*KR’776*) or an affidavit attesting to the accuracy of the translation thereof (indeed, Petitioner does not even have these to provide).

There can be no doubt that AGCO would be prejudiced if Petitioner is allowed this second bite at the apple. Indeed, Petitioner is the only party not prejudiced. To the contrary, Petitioner would effectively be getting an additional opportunity to meet its burden. *See* 35 U.S.C. § 312(a)(3); 37 C.F.R. § 42.104(b).

V. CONCLUSION

The Board should deny Petitioner’s Motion. Moreover, the Motion only confirms what AGCO has established—that *KR’062* is not prior art. The Board should deny institution.

Dated: January 28, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2025, I caused a true and correct copy of the foregoing to be served upon counsel of record via email:

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned hereby certifies that this response complies with the page limitations set forth in the regulation and the Board's specific authorization in its email dated January 21, 2025. Specifically, this response does not exceed the 5-page limit authorized by the Board for addressing the issues raised in Petitioner's motion.

Dated: January 28, 2025

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