

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

**Before the Honorable Monica Bhattacharyya
Administrative Law Judge**

In The Matter Of

**CERTAIN HIGH-STRENGTH
ALUMINUM OR ALUMINUM ALLOY-
COATED STEEL, AND AUTOMOTIVE
PRODUCTS AND AUTOMOBILES
CONTAINING SAME**

Investigation No. 337-TA-1402

**OPPOSITION TO RESPONDENTS' MOTION TO COMPEL OR IN THE
ALTERNATIVE TO STRIKE [MOTION NO. 1402-009]**

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B	Email from J. Tabat to VinFast Counsel Regarding September 5, 2024, Discovery Conference (9/17/2024) (“Tabat Email Re Priority Date”)
C	Letter from R. LaMagna to VinFast Counsel Regarding J. Wilson Letter (10/22/2024) (“R. LaMagna Letter Re ROG 25”)
D	AM-ITC-0106957
E	Excerpts from Deposition of Dr. Ronald Kefferstein, Rough Tr. (11/15/2024) (“Kefferstein Deposition Rough Tr.”)
F	Excerpt from ArcelorMittal’s Objections and Responses to Respondents’ Notice of Corporate Deposition to Complainant (10/15/2024)

I. INTRODUCTION

VinFast’s motion to compel (or in the alternative, to strike) discovery relies on a contrived account of the record and must be denied.

First, VinFast seeks an order preventing ArcelorMittal from relying on evidence of conception and reduction to practice that supports a December 2005 priority date, which pre-dates the October 30, 2006, application date of the Asserted Patents. VinFast asserts that ArcelorMittal “withheld its burden contentions about the alleged [December 2005] priority date for the Asserted Patents until just two weeks before the close of fact discovery [November 1, 2024],” while “contending for the entirety of the investigation that the priority date for the Asserted Patents was October 30, 2006.” *See* Mot. at 1–2.¹ None of this is true. To start, ArcelorMittal’s November 1 supplementation occurred on the date for such supplementation as set by the procedural schedule—it was not some random date as VinFast misleadingly implies. Next, ArcelorMittal *never* represented that the filing date of the Asserted Patents was the earliest priority date to which the patents are entitled. To the contrary, ArcelorMittal *repeatedly* told VinFast it was investigating evidence of earlier conception and would supplement its contentions by November 1, which ArcelorMittal did. Neither did ArcelorMittal “delay” or “withhold” evidence of conception or wait to produce it, nor did VinFast move to compel a response before the November 1 date called for by the procedural schedule. ArcelorMittal timely supplemented its contentions on priority as soon as it had a basis from its investigation to do so—weeks before VinFast deposed the inventors. Thus, VinFast has no basis to strike timely served contentions as supposedly untimely.

¹ VinFast also waited nearly three weeks after ArcelorMittal supplemented its contentions to bring the present motion, and when it did file the motion it violated Ground Rules 3.2, 3.4.1, and 4.1.1 (including not raising these issues at the parties’ Discovery Conferences). This alone warrants denying the motion. ArcelorMittal nevertheless responds here to correct VinFast’s misstatements of the record and to detail the motion’s lack of substantive merit.

[REDACTED]

[REDACTED]

Second, in the alternative to preventing ArcelorMittal from relying on the priority date to which it is entitled by law, VinFast asks to be allowed to re-depose one of the inventors (Dr. Pascal Drillet), as well as to take an additional deposition out of time of *a then university student intern* (Raisa Grigorieva) who worked with Dr. Drillet *the year after* he and his co-inventors conceived of the claimed inventions. To justify this, VinFast contends that it just learned of Raisa Grigorieva at Dr. Drillet's deposition, and that ArcelorMittal disclosed the December 2005 priority date just "a few days" before Dr. Drillet's deposition (with some supporting documents produced after). Mot. at 4. These contentions are also false. As explained, ArcelorMittal served its supplement on priority *two weeks* before Dr. Drillet's deposition. VinFast had ample time to prepare for Dr. Drillet's deposition on that supplement *and* on the underlying documents. And VinFast in fact questioned Dr. Drillet regarding conception, Ms. Grigorieva,² and the documents identified in the supplemental response. As for Raisa Grigorieva, her *name* is referenced on the face of the patents (referring to a declaration submitted during patent prosecution) (Complaint Exs. 1, 2 at p.4, right column) and [REDACTED]

[REDACTED] VinFast thus could have noticed her deposition before the close of fact discovery. While VinFast asserts that Ms. Grigorieva had "material involvement in the conception, diligence, and reduction to practice of the alleged invention," VinFast misleadingly omits from its motion citations to the inventors' testimony that Ms. Grigorieva was a student intern who started her work *after* the inventors had the idea for the invention and who merely [REDACTED]

[REDACTED].

² Years after her internship (and years after filing of the Asserted Patents), Ms. Grigorieva obtained a doctorate, and is thus referred to by VinFast as Dr. Grigorieva. She is referred to here as Ms. Grigorieva when discussing the historical facts of 2006, as that was her title during her internship.

[REDACTED]

Third, VinFast also asks to re-depose Dr. Drillet, sitting as a corporate witness, because he supposedly “lacked relevant knowledge” of two pieces of alleged prior art from ArcelorMittal’s research from *over 20 years ago* (authors of which are no longer with the company). Mot. at 1. It deserves note that VinFast’s objection concerns Dr. Drillet’s testimony on just these two pieces of prior art from six columns of prior art cited on the face of the Asserted Patents and among the dozens of references identified by VinFast in its contentions. Tellingly, VinFast fails to provide with its motion a copy of the deposition topic for which Dr. Drillet was allegedly ill-prepared or ArcelorMittal’s objections and responses to VinFast’s topic. Based on counsel’s statement at the end of Dr. Drillet’s deposition, VinFast asserts Dr. Drillet was ill-prepared on Topic 4—the state of the art relating to the Asserted Patents. But Dr. Drillet did testify regarding the state of the art, even explaining that one exhibit on which he was questioned just showed [REDACTED] Ex. A (Drillet Deposition Rough Tr.) at 90. In short, Dr. Drillet provided detailed answers to each of counsel’s questions regarding the two alleged prior art references. What VinFast is really complaining about is that Dr. Drillet could not identify “the process conditions used in prior-art hot stamping” (Mot. at 9)—that is, the experimental conditions *behind* work depicted in alleged prior art (*but that are not recited in the prior art itself*). Yet this was *not* part of the deposition topic, nor does VinFast cite any case supporting the notion that a corporate witness must search for non-public, unpublished, internal experimental conditions that are *not* disclosed in a *twenty-year old* reference. Dr. Drillet testified completely within the agreed scope of Topic 4.

In sum, there is no basis to strike ArcelorMittal’s *timely* filed contentions. There is no basis to order a second deposition of Dr. Drillet on facts on which he was already questioned and which he answered completely (*i.e.*, conception and reduction to practice). And there is no basis to order the deposition of a former intern who was not involved in conception or reduction to practice and

[REDACTED]

who, regardless, could have been noticed for deposition before the fact discovery cutoff. Lastly, there is certainly no basis to order Dr. Drillet to testify again about facts that neither he nor ArcelorMittal know. At bottom, VinFast “had ample opportunity to obtain the information by discovery in the investigation” on these topics, requiring that its motion be denied. See 19 C.F.R. § 210.27(d) (ALJ “must limit” discovery where movant had “ample opportunity” or the discovery is “cumulative or duplicative”). VinFast’s motion therefore lacks any legal or factual basis and, respectfully, should be denied in full.

II. ARGUMENT

As a predicate, VinFast’s motion is untimely and was filed in violation of the Ground Rules. At the November 21 Case Management Conference, VinFast acknowledged that it failed to comply with the Ground Rules, but argued that such should be overlooked because the issues “arose very recently with respect to depositions that occurred the prior week.” CMC (11/21/2024) Hearing Tr. at 8:7–9:6. ArcelorMittal’s contention supplement on priority occurred on November 1, nearly *three weeks before* VinFast filed its motion. VinFast Ex. 2 at 149. Nor did VinFast raise any objection on this issue with ArcelorMittal before filing its motion (save an email a few hours before filing), including staying silent when the parties conferred for their bi-weekly Discovery Conference on November 14—itsself *two weeks after* ArcelorMittal’s November 1 supplement. Nor did VinFast then ask to depose Raisa Grigorieva, whose [REDACTED] [REDACTED] (and whose name appears in references listed in the Asserted Patents). Accordingly, VinFast failed to comply with the Ground Rules and its motion should be denied for this reason. *E.g., In the Matter of Certain Mobile Electronic Devices*, Inv. No. 337-TA-1324, Order No. 18 at 3 n.2 (Mar. 9, 2023) (“Accordingly, the motion could have been denied for failure to comply with the Ground Rules, in addition to a denial on the merits.”).

A. VinFast Has No Basis to Prevent ArcelorMittal from Relying on Timely Disclosed Evidence of Earlier Conception and Reduction to Practice.

There is no question that the deadline to supplement contentions on which a party bears a burden was November 1, 2024. Order No. 7 at 2. Nor is there any dispute that ArcelorMittal met that deadline in supplementing its contentions concerning priority (*i.e.*, evidence of earlier conception and diligent reduction to practice). ArcelorMittal thus did not improperly withhold any information.

First, contrary to VinFast’s inaccurate statement, ArcelorMittal never “contended” or told VinFast that the priority date for the asserted patents was October 30, 2006. Just the opposite—in both litigation correspondence and during the parties’ bi-weekly Discovery Conferences, ArcelorMittal *repeatedly* informed VinFast that it was investigating evidence of earlier conception and reduction to practice, expressly informing VinFast that ArcelorMittal *would update its disclosures* with identified facts on that issue. Ex. B (Tabat Email Re Priority Date) at 1; Ex. C (R. LaMagna Letter Re ROG 25) at 2. And that is exactly what ArcelorMittal timely did.

To support its motion, VinFast states: “From the outset of the Investigation, ArcelorMittal identified October 30, 2006 as the earliest priority date for the Asserted Patents. Ex. 1 at 19.” Mot. at 3 (citing ArcelorMittal Complaint at p. 19). Yet ArcelorMittal made *no such statement* in its Complaint; if VinFast refers to paragraph 37 of the Complaint, that paragraph does not reference a “priority date,” but merely provides the history of the Asserted Patents. *See* VinFast Ex. 1 at 19. Next, VinFast asserts that, during discovery, ArcelorMittal stated that it “would be withholding its response until the deadline for contention interrogatory responses.” Mot. at 3 (citing VinFast Ex. 5 at 56–57). This did not happen either—ArcelorMittal stated that it would “respond to this contention interrogatory *by* the deadline for final supplementation” (not withhold a response “until” the deadline). *See* VinFast Ex. 5 at 57 (emphasis added).

[REDACTED]

[REDACTED]

This pattern of misrepresenting the record continues in the next paragraph of VinFast’s motion, where VinFast cites its own self-serving “understanding” of ArcelorMittal’s position on priority in an email and letter, then writes that “[f]or more than two months, ArcelorMittal said nothing about the priority date.” Mot at 4 (citing Ex. 8 [at p. 1, re: Interrog. 23] and Ex. 9 at 3 [re: Interrog. 25]). But VinFast *omits ArcelorMittal’s responses* to that correspondence, where ArcelorMittal repeatedly corrected VinFast. In response to VinFast’s email, ArcelorMittal confirmed that it had an “ongoing” investigation into priority, was collecting records, and intended to supplement its contentions and produce further responsive information “as it becomes available.” Ex. B (Tabat Email Re Priority Date) at 1–2. In response to VinFast’s letter, ArcelorMittal wrote back stating that “we disagree with [VinFast’s] characterizations” and confirming that ArcelorMittal was reviewing its contentions to prepare supplementation. Ex. C (R. LaMagna Letter Re ROG 25) at 1–2. And ArcelorMittal repeatedly confirmed to VinFast during the parties’ bi-weekly Discovery Conferences that it was reviewing priority and would be supplementing its contentions. In sum, VinFast’s sandbagging narrative is false.

Second, VinFast offers no factual basis to suggest ArcelorMittal “deliberately conceal[ed] and delay[ed]” its priority evidence despite being “aware of all the factual bases for its contention well before the deadline.” Mot. at 7. ArcelorMittal did not. The research behind these patents occurred nearly 20 years ago (before Mittal Steel merged with Arcelor and ArcelorMittal was formed), one of the inventors has passed away, and records from that period are hard to locate, which is exacerbated by the fact that [REDACTED].

[REDACTED]. Ex. A (Drillet Deposition Rough Tr.) at 62:7–19. [REDACTED].

[REDACTED]. This investigation took time, and it was challenging to finalize contentions on the accelerated timetable

inherent in this proceeding. Nevertheless, Arcelor supplemented its contentions on priority as soon as it had a basis from its investigation to do so, and VinFast offers *no evidence* to the contrary.³

Third, VinFast was not prejudiced by the timing of ArcelorMittal's disclosure. VinFast has asserted multiple items of printed and system art to support alleged invalidity, many of which predate December 2005. ArcelorMittal's claimed priority does not preempt VinFast's invalidity case. And ArcelorMittal's disclosure per the case schedule occurred *two weeks before* the inventor depositions. This gave VinFast ample time to prepare to question the inventors on this issue, which VinFast did. Illustrating the pretextual nature of VinFast's present motion, VinFast then sat on its hands for 19 days before bringing its motion, doing so only after it had deposed ArcelorMittal's witnesses (and after fact discovery closed). Apparently, after not getting admissions to support its case from ArcelorMittal's witnesses, VinFast opted for "Plan B."

It bears repeating that November 1 was not a random date, but the date permitted for ArcelorMittal's disclosure in the procedural schedule. VinFast offers no support for the assertion that timely served contentions can be struck without evidence of gamesmanship. In sum, absent

³ Given there is no basis for any notion that ArcelorMittal deliberately delayed or concealed facts, VinFast's cited authority (see Mot. at 7–8) *supports* ArcelorMittal's right to supplement its contentions on the deadline. See *Certain Audio Players & Components Thereof (II)*, Inv. No. 337-TA-1330, Ord. No. 19 at 3 (Mar. 23, 2023) (“[F]inal-day responses are timely and proper under the rules *unless* it can be shown they were somehow due earlier under the ‘seasonable’ update requirement of Commission Rule 210.27; *i.e.*, the party deliberately withheld the corrective information.”); *Certain Graphics Systems, Components Thereof, and Digital Televisions Containing the Same*, Inv. No. 337-TA-1318, Order No 41 at 1–2 (Nov. 28, 2022) (party “permitted” to supplement contentions on cut-off date without leave); *cf. Certain Elec. Devices with Image Processing Sys., Components Thereof, & Associated Software*, Inv. No. 337-TA-724, Ord. No. 24, 2011 WL 1089290, at *3 (Mar. 3, 2011) (striking supplemental response served *after* cut-off date and relying on material not produced during discovery, only after party *admitted* it “overlooked” evidence in its possession); *Certain Optoelectronic Devices for Fiber Optic Commc’ns, Components Thereof, & Prod. Containing Same*, No. 337-TA-860, Order No. 13, 2013 WL 3049138, at *5 (Apr. 23, 2013) (striking supplemental responses relating served *after* the cut-off where they relied on “new theories and positions” rather than added evidence).

[REDACTED]

[REDACTED]

facts not present here, timely served contentions cannot be struck as untimely. *E.g.*, *Certain Power Semiconductors and Mobile Devices and Computers Containing Same*, Inv. No. 337-TA-1308, Order No. 34 at 6–9 (Jan. 26, 2023) (denying motion to strike additional evidence of a priority date where Complainant’s “interrogatory response clearly disclosed [Complainant’s] contention” regarding the priority date).

B. VinFast Has No Basis for Late Depositions on Documents and Topics on Which It Had Notice During Discovery and Already Deposed Witnesses

i. There Is No Basis to Re-depose Dr. Drillet

As noted above, ArcelorMittal’s priority contentions were timely served, and served two weeks before Dr. Drillet’s deposition (with supporting documents served at the same time). And dispositive here, VinFast *actually deposed* Dr. Drillet on the facts of conception and reduction to practice, including on the documents that were disclosed with ArcelorMittal’s priority contentions, such as [REDACTED]. See Ex. A (Drillet Dep. Rough Tr.) at 145–157 (answering questions on [REDACTED]). VinFast does not get a second bite at the apple, taken out of time, just because it does not like Dr. Drillet’s answers. VinFast provides no authority that supports re-deposing Dr. Drillet on these issues or on any other issue.

VinFast’s sole remaining argument that Dr. Drillet should be deposed again is its assertion that “ArcelorMittal produced documents allegedly supporting its new priority date contention” just “a few hours *after* Dr. Drillet’s deposition.” Mot. at 6. But tellingly, VinFast does not provide with its motion a single such document on which VinFast seeks to question Dr. Drillet (nor identify how few such documents were produced in all). This is because many of these documents (the ones ArcelorMittal uses as evidence to support its priority date contentions) consist of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. There is no substantive factual information shown in these redacted documents on which VinFast could question Dr. Drillet.⁴ See, e.g., Ex. D (AM-ITC-0106957). Moreover, VinFast had the opportunity to question Dr. Ronald Kefferstein (another named inventor) about these documents at his deposition the following day, did so, and did not assert that he answered the questions inadequately. Ex. E (Kefferstein Deposition Rough Tr.) at 51–56.

The remaining documents produced on November 14 are irrelevant to the issues in this Motion (i.e., related to domestic industry and/or responsive to Requests for Production that VinFast did not serve until October 23). VinFast’s motion is tellingly void of any description of these documents or proffer of what questions it would need to ask Dr. Drillet about them that would justify a second deposition. No doubt, if VinFast thought the substance of the documents produced on November 14 supported its motion, VinFast would have identified a question or two that it needed to ask Dr. Drillet, including about the redacted items. But VinFast did not.

ii. There Is No Basis to Depose Raisa Grigorieva

The core of VinFast’s belated request to take the deposition of Raisa Grigorieva out of time is VinFast’s representation that “ArcelorMittal revealed [Ms.] Grigorieva’s material involvement in the conception, diligence, and reduction to practice of the alleged invention just two days before the close of fact discovery in Dr. Drillet’s deposition.” Mot. at 1. But this statement is false. There is no support for VinFast’s elevation of Raisa Grigorieva as a student lab intern at the time to her having “material involvement” in anything relevant to this case. The undisputed evidence

⁴ Thus, VinFast’s authority is inapposite. In *Certain Radiotherapy Systems & Treatment Planning Software, & Components Thereof*, a second deposition was allowed because *thousands* of pages of factually probative documents were produced late. Inv. No. 337-TA-968, Order No. 27 at 2, 4–6 (May 9, 2016). In *Certain Radio Frequency Identification (“RFID”) Products and Components Thereof*, nearly 10,000 documents totaling over *85,000 pages* were produced late. Inv. No. 337-TA-979, Order No. 25 at 2–4 (July 12, 2016). In contrast, here, VinFast cannot point to a single *factually probative* document that was produced late, much less thousands of pages of such.

[REDACTED]

from the inventors—*wholly un rebutted and conveniently not cited by VinFast*—is that Raisa Grigorieva *did not* conceive of any part of the claimed inventions, nor did she have a “material” role in their reduction to practice. Rather, VinFast cut its argument about this intern’s role from whole cloth, without any basis in evidence.

To be clear, Raisa Grigorieva did not work at the company when the inventions were conceived. Dr. Drillet testified unequivocally (and repeatedly) that she was an intern and had no part in the invention, testifying [REDACTED]

[REDACTED] Ex. A (Drillet Deposition Rough Tr.) at 139:10–13; *see also id.* at 152 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁵ Instead, Dr. Drillet testified that Ms. Grigorieva [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. And no evidence exists in the case to the contrary. If it did, VinFast would not have made its representations about Raisa. Grigorieva by fiat and omitted from its motion Dr. Drillet’s repeated testimony that she was not involved in the invention; instead, VinFast would have cited in its motion actual factual support to show her supposed “material” role.

⁵ Dr. Kefferstein confirmed that [REDACTED]
[REDACTED] Ex. E (Kefferstein Deposition Rough Tr.) at 24–25.

[REDACTED]

Given the above, Raisa Grigorieva was not named by ArcelorMittal in its interrogatory responses (as VinFast notes, Mot. at 5). This is not an error or omission; it is an accurate response given Ms. Grigorieva's job function as a student intern at the time. Regardless, Raisa Grigorieva's name appears on the face of the patent (Complaint Ex. 1, 2 at p.4, right column), and [REDACTED]

[REDACTED]

[REDACTED]. If VinFast wanted to depose her, VinFast did not have to wait three weeks (and until after fact discovery ended) to seek to do so.⁶

C. VinFast Has No Basis to Re-Depose Dr. Drillet on Irrelevant Facts of Which Neither He nor ArcelorMittal Have Knowledge

VinFast also demands to re-depose a corporate witness on "the process conditions used in prior-art hot stamping." Mot. at 9. As an initial matter, VinFast did not leave the deposition open as to all "process conditions" used in all prior-art hot stamping, but instead contended that Dr. Drillet was inadequately prepared as to Topic 4, the "state of the art" at the time of conception and reduction to practice. Ex. A (Drillet Deposition Rough Tr.) at 157–158. Regardless, according to VinFast, ArcelorMittal's witness, Dr. Drillet, was not prepared to answer questions on this topic. Mot. at 9–11. But this is wrong for multiple reasons.

First, nowhere does VinFast identify in its motion a single relevant, substantive question about the alleged prior art that Dr. Drillet could *not* answer. This alone should end this inquiry.⁷

⁶ VinFast misleadingly states that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] There is no basis to suggest that VinFast did not appreciate the production it received.

⁷ VinFast inaccurately states that ArcelorMittal "started its search" to prepare for Dr. Drillet's deposition "just ten days before the close of fact discovery." Mot. at 10. This is false.

[REDACTED]

Second, VinFast fails to disclose that Dr. Drillet testified *extensively* about the alleged prior art in question. VinFast’s questioning centered on two pieces of prior art (*Laurent* and *Cornette*, Exs. 3 and 4 to his deposition), both of which Dr. Drillet reviewed and addressed in detail in his deposition. See Ex. A (Drillet Deposition Rough Tr.) at pp. 71–93 (answering questions on Exhibit 3) and pp. 95–105 (answering questions on Exhibit 4). Tellingly, VinFast not only omitted this fact from its motion, but strategically self-selected the deposition excerpts it disclosed so as to hide Dr. Drillet’s testimony. That VinFast manufactured this dispute is evidenced by the fact that VinFast never mentioned or otherwise gave notice that it would be questioning Dr. Drillet on these two pieces of alleged prior art. VinFast never identified these references in any discovery requests or topics, despite serving over 100 corporate deposition topics—these references never even came up in the parties’ extensive conferrals regarding the testimony VinFast expected of Dr. Drillet. And yet, Dr. Drillet still testified in detail about these references.

Third, while the alleged prior art VinFast raised in Dr. Drillet’s deposition involved research related to ArcelorMittal, the work that went into these articles occurred over 20 years ago and involved authors who have since retired from ArcelorMittal. Thus, not only is Dr. Drillet’s personal knowledge of events from over 20 years ago limited, but so are ArcelorMittal’s records. Here, Dr. Drillet testified to his personal knowledge and, within the agreed scope of topics, to ArcelorMittal’s knowledge. As a matter of law, Dr. Drillet was not required to have knowledge

ArcelorMittal and its counsel have been meeting with Dr. Drillet, as well as conducting other investigation tasks, for many months. VinFast draws its inaccurate conclusion from one email and the fact that ArcelorMittal produced a number of documents before the discovery cutoff. *Id.* But VinFast misleadingly suggests that the bulk of ArcelorMittal’s production was late, ignoring that almost all of the documents produced on or after November 8 (3358 out of 3400) are testing results supporting the infringement and domestic inquiries prongs having *nothing to do with* Dr. Drillet’s deposition. And even these testing documents were just Bates-stamped versions of documents that had been *provided to VinFast earlier* in native form and/or without Bates stamps.

of, prepare on, or testify to more than this—Dr. Drillet was not, for example, required to testify to facts known only to third parties and/or not presently known to ArcelorMittal. *See, e.g., Certain Automated Storage and Automated Retrieval Sys., Robots, and Components Thereof*, Inv. No. 337-TA-1228, Order No. 16 at 3-4 (May 6, 2021) (refusing to compel testimony outside party control).

Fourth, VinFast’s motion violates Ground Rule 3.4.2 (another basis to deny the motion) by not attaching the deposition topic at issue and ArcelorMittal’s objections and response. VinFast thus obscures that the subject on which it now demands a further deposition—“the process conditions used in prior-art hot stamping” (Mot. at 9)—is outside the scope of agreed upon testimony and not even the topic complained of at the conclusion of Dr. Drillet’s deposition. To be clear, VinFast is not seeking testimony about what is disclosed in the alleged prior art, but about experimental conditions *that are not recited* in the prior art. ArcelorMittal never agreed to put up a witness on this topic—in fact, ArcelorMittal expressly and repeatedly told VinFast that it would *not* be providing a witness on this topic.⁸ And VinFast never moved to compel such testimony before deposing ArcelorMittal’s witnesses. The topic on which Dr. Drillet was designed (Topic 4) initially asked overbroadly for a witness on the “[t]he state of the art relating to the Asserted Patents.” Ex. F (Excerpt from ArcelorMittal Responses and Objections to VinFast Corporate Deposition Notice) at 13–14. ArcelorMittal objected that the topic was, *inter alia*, overly burdensome and improperly sought expert testimony and third-party knowledge. *Id.*

⁸ In conferring on VinFast’s noticed deposition topics in October, ArcelorMittal repeatedly stated that it would *not* put up a corporate witness to testify to the state of hot stamping technology or process standards in the prior art, which ArcelorMittal objected to as overly burdensome, overbroad, and properly the subject of expert testimony, not fact discovery. ArcelorMittal’s counsel informed VinFast on a meet and confer that, if VinFast required such testimony, the parties were at an impasse and VinFast would need to move to compel. There is no question that ArcelorMittal never agreed to provide corporate testimony on the subject matter that VinFast now seeks to recapture.

[REDACTED]

ArcelorMittal agreed only that Dr. Drillet would testify on “facts regarding the prior art” itself, to the extent “known to ArcelorMittal.” *Id.* And that is exactly what Dr. Drillet did. See Ex. A (Drillet Deposition Rough Tr.) at pp. 72–93 (answering questions on Exhibit 3) and pp. 95–105 (answering questions on Exhibit 4).

Fifth, the subject on which VinFast wants a further deposition is not relevant. The non-public, unpublished, internal experimental “process conditions used in [the] prior art hot stamping” (see Mot. at 9) at ArcelorMittal over twenty years ago are irrelevant. These *non-public* facts, even if known, do not qualify as, nor are part of, prior art under Section 102 (or any other section of the Patent Act), and are thus not relevant or admissible to prove supposed invalidity. Dispositive here, VinFast provides no authority to support that non-public, unpublished, experimental conditions that occurred before the priority date have any relevance to validity. See, e.g., *Certain Semiconductor Devices, Mobile Devices Containing the Same, and Components Thereof*, Inv. No. 337-TA-1336, Order No. 36 at 5 (June 12, 2023) (“It is [the moving party’s] burden to make an initial showing that the requested discovery is relevant.”); *Certain Air Mattress Systems, Components Thereof, and Methods of Using the Same*, Inv. No. 337-TA-971, Order No. 24 at 2 (May 24, 2016) (moving party has the “initial burden to show the relevance of the information”).

Sixth, this issue is moot. VinFast is seeking “facts” concerning experiments run over 20 years ago and involving employees who have left the company—ArcelorMittal’s knowledge is understandably limited. [REDACTED]

VinFast sets forth no basis to assume or support that there is more testimony or “facts” to be had here. Nor is VinFast entitled to conscript Dr. Drillet as its surrogate expert and require him to go *outside the company* to learn *new* facts concerning prior art.

[REDACTED]

In sum, setting aside that VinFast failed to timely move for a deponent on the topic it now seeks (process conditions *not* stated in the alleged prior art), VinFast cannot seek testimony that is both irrelevant and outside of Dr. Drillet’s or the company’s knowledge. Dr. Drillet was not sitting as an expert witness—and demanding expert testimony outside his or ArcelorMittal’s knowledge is improper. Dr. Drillet provided testimony on the scope of all the topics on which he was designated, and VinFast has not identified one question inside that scope that Dr. Drillet could not answer. VinFast’s motion is thus without basis and should be denied.

III. CONCLUSION

For the foregoing reasons, VinFast’s motion should be denied in its entirety.

Dated: December 2, 2024

Respectfully submitted,
/s/ Benjamin Hershkowitz

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CERTIFICATE OF SERVICE

I, Michael Delaney, certify that on December 2, 2024, a copy of the ArcelorMittal's **SEALED OPPOSITION TO RESPONDENTS' MOTION TO COMPEL OR IN THE ALTERNATIVE TO STRIKE** was served, pursuant to Commission regulations, on the following interested parties in the manner so indicated:

The Honorable Monica Bhattacharyya Administrative Law Judge U.S. International Trade Commission 500 E Street, S.W. Washington, DC 20436	<i>Via E-mail:</i> <i>Bhattacharyya337@usitc.gov</i>
<i>Counsel for Respondents VinFast Auto Ltd., VinFast Auto LLC, VinFast USA Distribution, LLC, Vingroup USA, LLC, and VinFast Trading and Production JSC:</i> Michael J. McKeon Joseph V. Colaianni Linhong Zhang Sangki Park April Sunyoung Park Jack R. Wilson Daniel Y. Lee Irene Hwang FISH & RICHARDSON P.C. 1000 Maine Avenue, S.W., Suite 1000 Washington, D.C. 20024 Telephone: (202) 783-5070 Ashley Bolt Brian P. Boyd FISH & RICHARDSON P.C. 1180 Peachtree St SE, Suite 2100 Atlanta, GA 30309 Telephone: (404) 892-5005	<i>Via E-mail:</i> <i>ServiceVinFastArcelorMittalITC@fr.com</i>

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Michael Delaney

CERTIFICATE OF SERVICE

I, Jason Perlman, certify that on December 9, 2024, a copy of the ArcelorMittal's **PUBLIC VERSION OF OPPOSITION TO RESPONDENTS' MOTION TO COMPEL OR IN THE ALTERNATIVE TO STRIKE** was served, pursuant to Commission regulations, on the following interested parties in the manner so indicated:

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