

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALBANY INTERNATIONAL CORP.,
Petitioner,

v.

VOITH PATENT GMBH,
Patent Owner.

Case IPR2025-01116
Patent 11,261,566

**PETITIONER'S REPLY TO PATENT OWNER'S
PRELIMINARY RESPONSE**

This Reply—addressing issues raised by Patent Owner’s (PO) preliminary response applicable only to Grounds 1A-1E and Grounds 3A-3E advanced in the Petition—timely responds to PO’s arguments because Petitioner could not have anticipated PO’s mischaracterizations of both the Petition and the applicable law.

I. THE PHOTOGRAPHIC EVIDENCE IN ADANUR AND RYDIN CAN BE USED TO DETERMINE DIMENSIONLESS QUANTITIES OF PRIOR ART FABRICS FOR INSTITUTION.

Dr. Pastore properly used photographs to determine the dimensionless quantities of the structure of prior art fabrics. In challenging the Petition’s reliance on photographs cited in Adanur and Rydin, PO makes sweeping and incorrect claims about the reliability of photographic evidence. *See* POPR 46-47, 67-68.

First, PO improperly alleges that photographs “are inherently imprecise and subject to distortion, scale ambiguity, and perspective limitations,” and “unreliable without a validated scale.” POPR 46. PO’s cited case law does not support this argument. PO misrepresents that *Jockmus*, a Second Circuit case, is Federal Circuit case law that would bind the Board. POPR 46 (citing *Jockmus v. Leviton*, 28 F.2d 812, 812 (2d Cir. 1928); *In re Wright*, 569 F.2d 1124, 1127 (C.C.P.A. 1977)). Moreover, the Second Circuit in *Jockmus* acknowledged that it knew “of no rule that figures can never of themselves be an adequate anticipation of mechanical inventions.” 28 F.2d at 812. PO’s reliance on *Wright*, *Hockerson-Halberstadt*, and *Wilson* is similarly misplaced because the court in these cases refused to credit

arguments that *drawings* disclose *quantitative dimensions* of depicted elements absent some indication the drawings were produced to scale. *See In re Wright*, 569 F.2d at 1127–28; *Hockerson-Halberstadt, Inc. v. Avia Grp. Int’l, Inc.*, 222 F.3d 951, 956 (Fed. Cir. 2000); *In re Wilson*, 312 F.2d 449, 454 (C.C.P.A. 1963).

Here, however, the Petition did not rely on drawings. Consistent with the ’566 patent’s use of photographs to show *dimensionless quantities* recited in the challenged claims, the Petition relied on photographs to teach these quantities. Pet. 15-18, 35-38, 98-103; EX1001 at 9:34-41, fig.4. These photographs—which, as Dr. Pastore explained, show cross sections of fabrics—represent “the relative proportions of the items in the photograph,” particularly the distance spanned by machine-direction threads and the loop size. *Valve Corp. v. Ironburg Inventions Ltd.*, IPR2017-01928, Paper 53, at 35 (PTAB. Jan. 26, 2023); *see* Pet. 35-38, 101-103; ALBANY-1003, ¶¶66, 365. The Board rejected an argument similar to PO’s here in *Valve. Id.*

Second, PO argues measurements of photographs “have been *consistently* viewed by courts not to be sufficiently reliable as clear and convincing evidence of invalidity,” citing a *single* district court decision that found an expert’s analysis of a photograph to be unreliable. POPR 47 (citing *Eastman Kodak Co. v. Agfa-Gevaert N.V.*, 560 F. Supp. 2d 227, 249-51, 275 (W.D.N.Y. 2008)). In that decision, however, the court did not, as PO represents, state that photographs as a

matter of law are not sufficiently reliable. POPR 47. Instead, the district court weighed the evidence presented at a bench trial, including trial and deposition testimony by the defendant's expert, to conclude that the expert's measurement protocol and the relied-on photograph was "not sufficiently reliable as to constitute clear and convincing evidence of invalidity." *Kodak*, 560 F. Supp. 2d at 234, 250-51. *Kodak* is also inapplicable because the district court applied the clear and convincing standard for an invalidity defense. *Kodak*, 560 F. Supp. 2d at 248-49; 35 U.S.C. § 273(b). By comparison, at this stage, the Petitioner must show only a "reasonable likelihood" that it would prevail under the lower "preponderance of the evidence" standard for an *inter partes* review. 35 U.S.C. §§ 314(a), 316(e).

Finally, PO's challenge to Dr. Pastore's testimony, by, for example, offering its own pre-institution expert testimony (EX2001), raises "complex technical issues and factual issues about the understanding of a person of ordinary skill in the art that are not properly decided at this stage" and instead are "appropriate for resolution at trial." *HyperBranch Medical Tech., Inc. v. Confluent Surgical, Inc.*, IPR2018-01191, Pap. 17, at 30-31 (PTAB Jan. 11, 2019); *see Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00221, Pap. 10, at 19 (PTAB July 7, 2025). PO's other arguments against the sufficiency of the Petition's reliance on photographs again mischaracterize the Petition and are again better suited for exploration during trial. *See, e.g.*, POPR 35-36.

For these reasons, the Board should not deny institution on the basis that the photographs in Adanur and Rydin are insufficiently reliable.

II. THE PETITION SHOWS A REASONABLE LIKELIHOOD THAT ADANUR AND RYDIN WERE PUBLICLY ACCESSIBLE BEFORE THE '566 PATENT'S EARLIEST PRIORITY DATE.

Petitioner has presented evidence showing the Adanur textbook and Rydin newspaper article are printed publication prior art. PO wrongly argues that institution should be denied because Adanur and Rydin “Are Not Printed Publications.” Pap. 9 (POPR), 28.

First, PO alleges that Petitioner incorporated arguments by reference from Ms. Munford’s declarations (EX1030; EX1031) by “implicitly asking the Board to ‘piece together’ potential arguments that may be made based on the facts alleged in the Munford Declarations.” POPR 29, 31. But the Petition appropriately relied on Ms. Munford’s declarations to support the prior art status of Adanur and Rydin. The Petition asserted—and PO does not dispute—that Adanur’s and Rydin’s publication dates were 11/1/2007, and 4/15/1992, respectively. Pap. 1 (Pet.), at 3. The Petition also separately demonstrated that Adanur and Rydin were *publicly available* as of 2017 and 1992, respectively, relying on evidence in Ms. Munford’s declarations that Adanur and Rydin were indexed in public library catalogs by title, publisher, subject, and date of acquisition, among other indexing parameters, using a Machine Readable Catalog (MARC) code. Pet. 3 (citing EX1030 ¶¶9-11 and

EX1031 ¶¶6-9); *see* EX1030, 28-29; EX1031, 24-25. Contrary to PO’s contentions, the Petition did not incorporate by reference Ms. Munford’s testimony but, instead, cited this testimony to demonstrate Adanur and Rydin were publicly available. *Cf. Liberty Energy Servs. LLC v. U.S. Well Servs., LLC*, IPR2025-00139, Pap. 14, at 29 (PTAB June 11, 2025) (finding “the Petition cite[d] to sections of [a] declaration testimony rather than incorporate[ed] them by reference into the Petition”); *Xilinx, Inc. v. Analog Devices, Inc.*, IPR2020-01336, Pap. 9, at 12 (PTAB Feb. 5, 2021) (“[T]here is no requirement that the Petition itself must include all the evidentiary support for the arguments within the Petition.”).

PO urges denial by mistakenly citing cases applicable to the *post*-institution stage rather than the *pre*-institution stage. In the pre-institution stage, as here, a petitioner need only establish a reasonable likelihood that the reference at issue is a printed publication. *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Pap. 29, at 20 (PTAB Dec. 20, 2019) (precedential). The Petition did so here by relying on Ms. Munford’s declarations in conjunction with *publication dates* listed in Adanur and Rydin, specifically relying on the declarations as evidence of Adanur’s and Rydin’s *public availability* in 2017 and 1992, respectively. Pet. 3.

The circumstances here are distinguishable from those in *Medivis*, the post-institution case relied on by PO. POPR 29 (citing *Medivis, Inc. v. Novarad Corp.*, IPR2023-00042, Pap. 37, at 10-11 (PTAB Apr. 23, 2024)). There, the petitioner’s

post-institution reply stated that, “[c]opyrighted ‘2015,’ Chen appeared online on April 13, 2015, and in print in June 2015.” *Medivis*, IPR2023-00042, Pap. 20, at 27 (PTAB Oct. 10, 2023) (citations omitted). The petitioner supported this statement by citing Chen and a declaration by an employee of the law firm that represented the petitioner. *Id.*; see *Medivis*, IPR2023-00042, Pap. 35, at 28 (PTAB Mar. 6, 2024); *Medivis*, IPR2023-00042, Pap. 1, Ex. 1009 (PTAB Oct. 12, 2022). The Board determined that the “Reply merely cite[d] this declaration without discussion” and accordingly declined to consider the declaration. *Medivis*, IPR2023-00042, Pap. 35, at 28-29. But the Board expressly acknowledged that a lesser showing of public accessibility is required at institution. *Medivis*, IPR2023-00042, Pap. 37, at 5. The Petition therefore appropriately relied on Ms. Munford’s declarations to show public availability.

Second, according to PO, Ms. Munford’s declarations expressed “opinion[s]” regarding the public availability of Adanur and Rydin and “provided no evidence or argument that interested members of the public would have actually been able to locate these references with reasonable diligence.” POPR 32-33. In PO’s view, the declarations at most show “technical accessibility” through the library catalog record creation process. POPR 34.

The record does not support PO’s arguments. The Board considers a totality of the evidence, including indicia on a face of reference, in determining whether a

petitioner has established a reasonable likelihood that a reference is a printed publication. *Hulu*, IPR2018-01039, Pap. 29, at 17-18. Ms. Munford’s declarations did not express mere opinion. She attached copies of the MARC records for Adanur and Rydin and referenced these records in her testimony. EX1030 ¶10, pp. 22-25; EX1031 ¶7, pp. 22-26. Ms. Munford then identified fields of the MARC records indicating the date of public availability of Adanur and Rydin. EX1030 ¶8; EX1031 ¶9. Such MARC records, as the Board has consistently found, are sufficient evidence at institution for showing a reasonable likelihood that references were publicly accessible. *See CrowdStrike, Inc. v. GoSecure, Inc.*, IPR2025-00068, Pap. 13, at 24-25 (PTAB May 2, 2025) (rejecting petitioner’s argument that MARC record merely showed “technical accessibility” rather than public accessibility); *Advanced Micro Devices Inc. v. RealTek Semiconductor Corp.*, IPR2023-00788, Pap. 12, at 23-24, 26-27 (PTAB Oct. 26, 2023). And PO does ***not adduce any evidence*** rebutting Ms. Munford’s testimony and, at most, presents arguments that raise an “issue of public accessibility [that would be] highly fact-dependent and may be best suited for resolution on a full and robust trial.” *Samsung Display Co., Ltd. v. Pictiva Displays International Ltd.*, IPR2024-01094, Pap. 11, at 19 (PTAB Jan. 23, 2025); *see* POPR 33-34.

For these reasons, the Board should not deny institution on the basis that Adanur textbook and Rydin newspaper article are not printed publications.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §42.6(e)(4), the undersigned certifies that on October 22, 2025, a complete and entire copy of this Petitioner's Reply to Patent Owner's Preliminary Response were provided via email, to the Patent Owner by serving the email correspondence addresses of record as follows:

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