

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALBANY INTERNATIONAL CORP.,

Petitioner

v.

VOITH PATENT GMBH,

Patent Owner.

PETITION FOR *INTER PARTES* REVIEW
OF U.S. PATENT NO. 11,261,566

Case No. IPR2025-01116

PATENT OWNER'S PRELIMINARY SUR-REPLY

This Preliminary Sur-Reply responds to the allegations in the Preliminary Reply (“Reply”) that the Preliminary Patent Owner Response (“POPR”) “mischaracterize[ed] the Petition and the applicable law.” Reply at 1. It did not.

I. Patent owner Did Not Mischaracterize Applicable Law

Petitioner alleges that Patent Owner has misrepresented *Jockmus*, a Second Circuit decision by Judge Learned Hand, as a Federal Circuit case. Reply at 1. According to the Petitioner, this “misrepresentation” occurred in a sentence on page 46 of the POPR that states: “[i]n fact, the Federal Circuit has explained that for a picture to anticipate a claim, the picture should include ‘sufficient disclosure’ and the description of the article accompanying the picture or drawing should provide sufficient disclosure for what it would reasonably teach a POSITA.” POPR at 46. However, the sentence is followed by a reference to *Jockmus* with a clear citation indicating that *Jockmus* is a “2nd Cir.” case and a citation to *In re Wright*, a CCPA decision—a predecessor of the Federal Circuit whose decisions are binding precedent for the Federal Circuit. In the following sentence, a Federal Circuit case *Hockerson-Halberstadt* and *In re Wilson et al.*, another CCPA decision, are cited. *Jockmus* was clearly identified as a Second Circuit case and was cited solely to support the quotation of the term “sufficient disclosure,” while the remaining cases, which are CCPA and Federal Circuit decisions, appropriately

support the context of the arguments on page 46. Petitioner's allegations of misrepresentation of applicable case law are no more than an attempt to inflate a minor matter in order to deflect from the core matter at hand – that its photographs provided insufficient disclosure to support its arguments. Context matters. By isolating a single detail and ignoring the broader record, Petitioner has misrepresented the POPR and wasted time and resources of both the Patent Owner and the Board.

II. Petitioner's Rebuttal Arguments Regarding Adanur and Rydin are Misleading and Should be Dismissed

Next, Petitioner challenges another trivial nuance—arguing that the caselaw cited in the POPR related to inaccuracy of measurements obtained from *drawings* and not *photographs*. Reply at 2. To support this “distinction,” Petitioner argues that its use of photographs was “[c]onsistent with the ’566 Patent’s use of photographs” and cites to a non-precedential PTAB decision and mischaracterizes it as rejecting arguments ‘similar to PO’s here.’” *Id.* at 2, (citing *Valve Corp. v. Ironburg Inventions Ltd.*, IPR2017-01928, Paper 53, at 35 (PTAB. Jan. 26, 2023)). However, although Petitioner has correctly observed that FIGs. 4-5 of the ’566 Patent are photographs, it appears to have missed the accompanying disclosure that clearly indicates the measurements at issue are obtained using “commercially available microscopes and [are] within the functional scope of the operating

software [of such microscopes].” ’566 Patent, 9:25-27. Petitioner and Dr. Pastore obtained their measurements by counting the pixels of scanned images of magazine and book photographs. They did not use a microscope and its accompanying software to examine an actual clothing. Therefore, the assertion that they were “[c]onsistent with the ’566 Patent’s use of photographs” is incorrect and misleading. Reply at 2. Petitioner’s reliance on *Valve Corp.* is also misplaced. The claim at issue in *Valve Corp.* recited “wherein the angle is between 5 and 90 degrees” and the Board opined that photographs could be used to show such “relative proportions” with the understanding that the “recited range for the claimed angle is quite broad, 5 to 90 degrees.” *Valve Corp.*, Paper 53 at 34-35. When read in context, *Valve Corp.* is a fact-specific decision, not a broad rule of law. It is common sense that while stretching or compressing a photograph can distort absolute dimensions such as length and height, relative proportions, such as a broad angle range of 5 to 90 degrees, remain unchanged. The diameter of an MD thread is a fixed linear measurement, unlike an angle range of between 5 to 90 degrees, which reflects “relative proportions.” *Id.* Dr. Pastore’s measurements showed that the MD threads in *Adanur* appeared oval-shaped, indicating the image was distorted. This confirms that diameters, unlike relative proportions such as an angle of between 5 to 90 degrees, cannot be reliably extracted from photographs when distortion is possible. *See* POPR at 51.

Petitioner's rebuttal of Patent Owner's *Kodak* arguments is yet another attempt to deflect from the central issue: two out of the three invalidity grounds asserted in the Petition rely on limited data extracted from low-quality photographs and on measurements and calculations that are mathematically and statistically unsound. The issue here is neither the number of cases cited by Patent Owner, nor whether Petitioner has met its burden under the "preponderance of the evidence" or "clear and convincing evidence" standards. Reply at 3. Rather, the issue is that Petitioner has relied on inaccurate measurement obtained from distorted photographs of different fabrics and paired those measurements with unsound mathematical and statistical calculations. *See* POPR 47-51.

Petitioner's assertion that Patent Owner's expert testimony raises "complex technical issues" that are "appropriate for resolution at trial" is incorrect and unsupportable. Reply at 3. The questions of whether a reasonable POSITA would have been motivated to scan and count the pixels in digital reproductions of unrelated photographs of assorted books and magazines to determine precise dimensions of a highly specialized PMC and/or whether a POSITA would have appreciated that *Adanur*'s CD and MD Pictures are from different fabrics are hardly "complex technical issues" that warrant institution of trial. *Id.* The incorrect assumptions and analytical errors in the Petition that were explained in the POPR are clear to see even without expert analysis. Also, the decisions cited by Petitioner

merely reflect instances in which the Board determined that certain issues were better addressed at trial. Reply at 3 (citing *HyperBranch Medical Tech., Inc. v. Confluent Surgical, Inc.*, IPR2018-01191, Paper 17, at 30-31 (PTAB Jan. 11, 2019); see *Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00221, Paper 10, at 19 (PTAB July 7, 2025)). None of those decisions involve photographic evidence or bear any meaningful similarity to the facts of this case.

III. Petitioner Did Not Present Any Arguments that Adanur and Rydin Purported Printed Publications

According to the Petitioner, its sole reliance on the Munford Declarations to show the public availability of *Adanur* and *Rydin* was appropriate because it was *citing* to these documents to support “the prior art status” and public availability and *citing* evidence is different from incorporation by reference. Reply at 4-5. However, while *citing* may be permissible in a Petition, the Petition has to at least independently present and articulate *some* arguments. Otherwise, citing to “portions of another document, without sufficient explanation of those portions, amounts to incorporation by reference.” *Cisco Systems, Inc. v. C-Cation Technologies, LLC*, IPR2014-00454, Paper 12 at 8 (Aug 29, 2014). Here, across the entire 13,944 word-long Petition, the only discussion regarding public availability of *Adanur* and *Rydin* is a single 20-word sentence that simply indicates *Adanur* and *Rydin* “were publicly available as of 2017 and 1992, respectively.”

Petition at 3. No other argument or discussion is provided. No legal standards are explained or applied. While citing may be permissible, Petitioner has failed to provide “sufficient explanation” for its citations, rendering them nothing more than impermissible “incorporation by reference” and a “self-help increase in the length of the brief.” *Cisco Systems*, Paper 12 at 8, 10 (citing *DeSilva v. DiLeonardi*, 181 F.3d 865, 866-67 (7th Cir. 1999)).

Petitioner's reliance on *Hulu* is also misplaced. Reply at 5. According to Petitioner, under *Hulu*, its only burden at the pre-institution stage is to “establish a reasonable likelihood that the reference at issue is a printed publication.” *Id.* However, Petitioner has missed an important requirement of the *Hulu* decision: that Petitioner “at the institution stage [must] identify, ***with particularity***, evidence sufficient to establish a reasonable likelihood that the reference was publicly accessible before the critical date of . . . and therefore that there is a reasonable likelihood that it qualifies as a printed publication.” *OBM, Inc. & Cholla Energy LLC. v. Lancium LLC*. IPR2023-01407, Paper 9 at 23 (March 13, 2024) (emphasis added) (citing *Hulu*, Paper 29 at 13). In *OBM*, the Board emphasized that “public accessibility, the touchstone for status as a printed publication (*see Hulu* at 13), requires more than establishing that documents were available to the public” and found that the Petitioner had failed to meet its burden of “providing ***particular*** evidence sufficient to establish a reasonable likelihood that” was publicly

accessible to qualify as a printed publication. *OBM* Paper 9 at 24, 28. Here, similar to *OBM*, neither the Petition nor the declarations include any arguments, analysis, or particular evidence to show that that any actual search was performed or what a sufficient search would have been able to locate *Adanur* and *Rydin*. See POPR at 33-34.

Petitioner's reliance on *CrowdStrike* is also misplaced. Reply at 7 (citing *CrowdStrike, Inc. v. GoSecure, Inc.*, IPR2025-00068, Pap. 13, at 24-25 (PTAB May 2, 2025)). The petitioner in *CrowdStrike* had discussed when and how the *King* reference had become publicly available and had only relied on expert declaration as true citation to support its arguments. See, e.g., *CrowdStrike*, Paper 1 at 11-23. *CrowdStrike* does not apply here because the Petition provided no independent discussion or ***particular*** evidence to establish a reasonable likelihood that *Adanur* and *Rydin* were publicly available and merely cited to the Munford Declarations, which at best show technical accessibility.

Accordingly, the Reply adds no meaningful substance or arguments and merely attempts to obscure the critical flaws that Patent Owner has already identified and addressed in the POPR. Patent Owner maintains that Petitioner's Grounds 1 and 3 rest on fundamentally unreliable data and references which have not established to qualify as prior art. Therefore, Patent Owner respectfully requests that the Board decline to institute *inter partes* review of the '566 Patent.

Respectfully submitted,

Dated: October 29, 2025

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), I certify that this Patent Owner's Preliminary Sur-Reply complies with the type-volume limits of 37 C.F.R. § 42.24(b)(1) because it contains 1,634 words, excluding the parts that are exempted by 37 C.F.R. § 42.24(a), according to the word processing system used in preparation of this Reply.

Dated: October 29, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4), the undersigned certifies that on October 29, 2025, a complete copy of the foregoing Patent Owner's Preliminary Sur-Reply was served on Lead and Back-up Counsel for Petitioner at the service address provided in Petitioner's Mandatory Notices:

Email: IPR59054-0006IP1@fr.com

Dated: October 29, 2025

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