

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALBANY INTERNATIONAL CORP.,
Petitioner,

v.

VOITH PATENT GMBH,
Patent Owner

IPR2025-01116
U.S. Patent 11,261,566

PATENT OWNER'S MOTION TO STRIKE

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to the Board’s authorization of July 24, 2026, Patent Owner respectfully requests that the below arguments and evidence be stricken. The Board grants this “exceptional remedy” where newness “may be beyond dispute” or where a reply “clearly relies on a new theory not included in prior briefing.” Trial Practice Guide (“TPG”), 80-81. Both circumstances are present here, and the newness is not merely beyond dispute; it is admitted. Dr. Pastore’s second declaration twice describes its centerpiece as “[m]y new measurements” (EX1053, ¶¶35, 67) and concedes that the data underlying his first declaration came from files whose pixel counts differ from the exhibits of record (EX1053, nn.2-3).

I. LEGAL STANDARD

A reply “may only respond to arguments raised in the corresponding . . . patent owner response.” 37 C.F.R. § 42.23(b). “Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a prima facie case of unpatentability.” TPG, 73. “‘Respond’ . . . does not mean proceed in a new direction with a new approach....” TPG, 74.

II. ARGUMENT

A. Reply § II.B.1 and EX1053 ¶¶9-15 present a new claim-mapping theory that contradicts the Petition (Grounds 1A-1E)

In Ground 1, the Petition mapped the claimed LD/MDYD ratio using two different images from Adanur: LD (0.96mm) from the MD image and MDYD (0.32mm) from the CD image. Petition, 37-38 (mapping element [1.5]: LD and

MDYD “based on measurements of Adanur’s Fig. 3.15”) (“see [1.4]”); EX1003, ¶¶133-136; *see id.*, ¶¶68-71. But, as demonstrated in the POR, the two images depict different fabrics and cannot be combined to show the claimed elements. POR, 19-21. Faced with that showing, Petitioner changed course. In Reply, Petitioner does not defend this inaccurate cross-image mapping. Instead, Petitioner now submits a new calculation found nowhere in the Petition or EX1003. Petitioner asserts an LD/MDYD ratio of 3.3 **computed entirely within the MD image** (EX1053, ¶13) and confirms its change in position, that these “parameters [are] derived solely from Adanur’s MD image.” Reply, 3. Based on this new single-image assessment Petitioner declares that “[w]hether the two images are of the same fabric is irrelevant,” (Reply, 3-4), even though this directly contradicts the position taken in the Petition as well as the Reply’s own words one page later: Dr. Pastore “utilized MDYD measurements from the CD image.” Reply, 3-4. Petitioner is not allowed to rewrite its petition after relying on a demonstrably flawed assessment. This is not “explaining how its original petition was correct”; it is “an entirely new theory of prima facie obviousness absent from the petition.” *Wasica Fin. GmbH v. Cont’l Auto. Sys., Inc.*, 853 F.3d 1272, 1286 (Fed. Cir. 2017); *see Ariosa Diagnostics v. Verinata Health, Inc.*, 805 F.3d 1359, 1367-68 (Fed. Cir. 2015) (reply may not raise a “meaningfully distinct contention”); TPG 74-75. That the Reply casts the theory as answering the POR (Reply, 3) does not

save it: the “newness” restriction bars a new theory “even if the new theory is responsive to the patent owner's response or the Board’s institution decision.”

Corephotonics, Ltd. v. Apple Inc., 84 F.4th 990, 1008 (Fed. Cir. 2023).

B. In connection with the Reply, EX1053 ¶¶35-52 present first-time measurements of the record Adanur exhibit (Grounds 1A-1E)

The POR also demonstrated that Dr. Pastore’s pixel counts used in Ground 1 do not match the Adanur exhibit of record. POR, 24-25. Again, rather than defend his original data, Dr. Pastore provided new “dimensional measurements on the Adanur exhibit that was obtained from” P-TACTS (“[m]y new measurements”). EX1053, ¶¶35-36 (emphasis added). Dr. Pastore also used tools and a measurement process disclosed nowhere in EX1003 (pdfimages; a pixel grid; an “equivalent diameter” calculation). *Compare* EX1053, ¶¶36, 40-44, 50-51, *with* EX1003, ¶¶67-73 (original methodology disclosing neither the extraction tool, the pixel grid, nor an equivalent-diameter calculation). These are not the theories and arguments Petitioner raised in the Petition. These measurements could have been performed for the Petition but were not. Moreover, the declaration admits that Dr. Pastore’s original pixel counts “are different than the pixel counts for the Adanur file that was obtained for me from the P-TACTS system.” EX1053, ¶¶35-36 and nn.1-2. The Reply relies on this improper belated assessment. Reply, 9-10 (§§ II.C.3-C.4) (citing EX1053, ¶¶35-48, 49-52). Reply measurements offered after errors were discovered in the petition-stage testing “exceeded the proper scope of a

reply”: the petitioner “could have presented” the new data “with its original Petition,” and it would be “manifestly unfair” to allow it “to substitute” new data in reply. *Corning Inc. v. DSM IP Assets B.V.*, IPR2013-00052, Paper 88, 11-14 (PTAB May 1, 2014); TPG 74 (a new issue is indicated by “new evidence necessary to make out a prima facie case”).

C. In connection with the Reply, EX1053 ¶¶67, 69-70 again present first-time measurements of Rydin (Grounds 3A-3E)

Unable to dispute the flaws identified in the POR, Dr. Pastore likewise seeks to replace the original measurements used in Ground 3A. EX1053, ¶¶67, 69-70 and n.3. He again provides new “dimensional measurements on the Rydin exhibit that was obtained from P-TACTS” (again, “[m]y new measurements”). *Id.* (emphasis added). And, again he concedes the pixel counts of the file he measured for EX1003 “are different than the pixel counts for the Rydin file that was obtained for me from the P-TACTS system.” EX1053, ¶¶67, 69-70 and n.3. Petitioner explicitly relies solely on what it itself calls Dr. Pastore’s “newly performed measurements.” Reply, 25-26 (§ IV.D). These new arguments were not present in the Petition and are improper for the same reasons described in Section II.B.

D. Petitioner’s New Arguments and Assessment Unduly Prejudice Voith

Not only are Petitioner’s Reply arguments impermissible under the rules, but this late disclosure also limits Voith’s ability to respond to these theories. Patent Owner’s sur-reply “may not be accompanied by new evidence other than

deposition transcripts of the cross-examination of any reply witness.” 37 C.F.R. § 42.23(b). As a result, Voith’s expert has no vehicle to analyze Dr. Pastore’s new measurements or the methodology disclosed for the first time in EX1053. The opportunity to submit only argument is not an adequate substitute for the responsive evidence § 42.23(b) forecloses. *In re NuVasive, Inc.*, 841 F.3d 966, 970-73 (Fed. Cir. 2016).

Cross-examining Dr. Pastore does not cure the lateness. *Dell Inc. v. Accelaron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018). Nor would disregarding the material at final decision: the parties would prepare for, and spend, the September 16, 2026 hearing addressing material that should never have been entered into the record. Because the newness is admitted (“[m]y new measurements,” ¶¶35, 67; pixel-count concessions, nn.1-3), this is the case in which newness is “beyond dispute” and the prejudice of waiting is too great. TPG 80-81.

III. RELIEF REQUESTED

Patent Owner respectfully requests that the Board strike: (1) EX1053, ¶¶9-15 and Reply § II.B.1 (pp. 3-4); (2) EX1053, ¶¶35-52, including footnotes 1-2, and Reply §§ II.C.3-II.C.4 (pp. 9-10); and (3) EX1053, ¶¶67 and 69-70, including footnote 3, and the portion of Reply § IV.D (pages 25-26) relying on them. In the alternative, Patent Owner requests that the Board decline to consider the identified material.

Date: July 31, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(4), the undersigned certifies that on July 31, 2026, a complete copy of the foregoing Patent Owner's Motion to Strike was served on Lead and Back-up Counsel for Petitioner at the service address provided in Petitioner's Mandatory Notices:

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