

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ELEKTA INC.
Petitioner,

v.

VARIAN MEDICAL SYSTEMS, INC. AND VARIAN MEDICAL SYSTEMS
INTERNATIONAL AG
Patent Owner.

Case No. IPR2016-00844
Patent 7,880,154

Before BRIAN J. MCNAMARA, PATRICK M. BOUCHER, and
GARTH D. BAER, *Administrative Patent Judges*.

BAER, *Administrative Patent Judge*.

ORDER
Granting Motion to Submit Supplemental Information
37 C.F.R. § 42.123

In a conference call with the parties on October 27, 2016, we authorized Elekta Inc. (“Petitioner”) to file a motion to submit supplemental information under 37 C.F.R. § 42.123(a). Petitioner filed its Motion (Paper 12), and Varian Medical Systems, Inc. and Varian Medical Systems International AG (“Patent Owner”) filed an authorized Statement Regarding Petitioner’s Motion (Paper 16). Petitioner seeks to submit testimony from Dr. Verhey and Dr. Otto in an International Trade Commission (“ITC”) investigation involving the same parties and patent as this proceeding. Paper 12, 1.

Dr. Verhey was Patent Owner’s expert on validity before the ITC, and Dr. Otto is the sole inventor of the challenged patent in this case. *Id.* at 2, 3. Petitioner asserts the supplemental information is relevant to a claim for which trial has been instituted as required under 37 C.F.R. § 42.123(a)(2), because the testimony addresses a prior art reference and claim terms that are at issue in this case. Paper 12, 1–4. Petitioner explains that it could not have submitted the testimony with its Petition, because the testimony is from an ITC hearing that took place more than two months after the Petition was filed. *Id.* at 1. In addition, Petitioner notes there is no burden or prejudice to Patent Owner because Patent Owner can address the supplemental information in its Patent Owner Response. *Id.* at 4.

In its Statement Regarding Petitioner’s Motion, Patent Owner explains that it does not oppose Petitioner’s Motion, but reserves the right to provide with its Patent Owner Response additional portions of Dr. Otto’s and Dr. Verhey’s ITC testimony, as well as any other papers related to the same ITC investigation. Paper 16, 2.

Case IPR2016-00844
Patent 7,880,154

Based on Petitioner's representations, and because the motion is unopposed, Petitioner's Motion to Submit Supplemental Information is granted.

ORDER

Accordingly, it is

ORDERED that Petitioner's Motion to Submit Supplemental Information (Paper 12) is GRANTED.

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