

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION,  
Petitioner,

v.

SIEMENS INDUSTRY, INC.,  
Patent Owner.

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Case IPR2017-00981  
Patent 7,092,801

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Before KRISTEN L. DROESCH, MEREDITH C. PETRAVICK, and  
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

GOODSON, *Administrative Patent Judge*.

ORDER

Granting Request to Submit Supplemental Information  
*37 C.F.R. § 42.123(b)*

During the hearing in this proceeding on June 11, 2018, the panel addressed Petitioner's request for authorization to file a motion to submit supplemental information pursuant to 37 C.F.R. § 42.123(b). Petitioner seeks to submit a short excerpt from the deposition of Mr. John Loud, Patent Owner's expert. Petitioner argues that although the deposition was taken in another proceeding, the excerpt is relevant here because Mr. Loud's testimony undercuts arguments Patent Owner presented in its Motion to Exclude. *See* Paper 28. Petitioner further argues that because the deposition occurred on June 1, 2018, the supplemental information could not have been obtained earlier and its consideration in this proceeding is in the interests of justice. Patent Owner opposes Petitioner's request. In Patent Owner's view, the deposition testimony is not relevant to this proceeding and its submission here would raise collateral issues regarding the alleged inconsistency between Mr. Loud's testimony in the other proceeding and Patent Owner's Motion to Exclude in this proceeding.

Given the narrowness of Petitioner's request and the advanced stage of this proceeding, we determine that briefing on the motion to submit supplemental information is unnecessary. We further determine that Petitioner has made a sufficient showing that the requirements of 37 C.F.R. § 42.123(b) are satisfied, considering that the deposition occurred on June 1, 2018 and the burden of reviewing a few pages of testimony from Mr. Loud is low. *See Ultratec, Inc. v. CaptionCall, LLC*, 872 F.3d 1267, 1272–73 (Fed. Cir. 2017). Patent Owner may present its arguments challenging the relevance of Mr. Loud's deposition testimony in a brief responsive paper.

Accordingly, it is

ORDERED that Petitioner's request to submit supplemental information is *granted*;

FURTHER ORDERED that Petitioner shall submit the proposed supplemental information as an exhibit no later than one week from the date of this Order;

FURTHER ORDERED that Petitioner may submit, along with the supplemental information, a paper of no more than two pages describing the relevance of the supplemental information to the issues in this proceeding; and

FURTHER ORDERED that Patent Owner may submit, no later than one week after the filing of the supplemental information, a responsive paper of no more than two pages.

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