

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTIMIDATOR, INC. and RF PRODUCTS, INC.,
Petitioner,

v.

BAD BOY, INC.,
Patent Owner.

Case IPR2018-01632
Patent 9,730,386 B1

Before FRANCES L. IPPOLITO, KEVIN W. CHERRY, and
PAUL J. KORNICZKY, *Administrative Patent Judges*.

KORNICZKY, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On April 23, 2019, a conference call was held between Intimidator, Inc. and RF Products, Inc. (collectively, “Petitioner”), Bad Boy, Inc. (“Patent Owner”), and Judges Ippolito, Cherry, and Korniczky. During the call, we discussed Petitioner’s request to file a Motion to Submit Supplemental Information under 37 CFR § 42.123(a).¹ A transcript of the call is available at Paper 24. Petitioner’s request is granted.

Under 37 CFR § 42.123(a), a party may file a motion to submit supplemental information in accordance with the following requirements:

(1) A request for the authorization to file a motion to submit supplemental information is made within one month of the date the trial is instituted.

(2) The supplemental information must be relevant to a claim for which the trial has been instituted.

As to the requirement of § 42.123(a)(1), Petitioner requested authorization to file the motion in an email dated April 11, 2019, within one month of the date the trial was instituted (i.e., March 13, 2019). *See* Paper 21. Patent Owner does not dispute that Petitioner’s request is timely.

As to the requirement of § 42.123(a)(2), Petitioner asserts that its supplemental information will include Patent Owner’s manuals from 2007 through 2012 and a supplemental declaration of Rolf deVries regarding the manuals. Petitioner asserts that this information is relevant to the issue of motivation to combine and will show inconsistencies with a position advanced by Patent Owner. Opposing Petitioner’s request, Patent Owner asserts that Petitioner is attempting to

¹ On the call, Patent Owner also indicated that it has not decided yet whether it will file a Patent Owner Response. We reminded Patent Owner that any arguments for patentability not raised in the response may be deemed waived. *See* Paper 22, 5.

use the supplemental information to correct and fill in gaps in its evidence presented in the Petition.

After considering the parties' arguments and the present record, we determine that Petitioner has met the requirements of 37 CFR § 42.123(a) to file a Motion to Submit Supplemental Information. Petitioner is authorized to file its motion. This is not a determination on the final merits of Petitioner's motion.

Petitioner must file its Motion to Submit Supplemental Information on or before May 7, 2019. Patent Owner must file its Opposition, if any, within seven calendar days of the filing date of Petitioner's Motion. Petitioner must file its Reply, if any, within seven calendar days of the filing date of Patent Owner's Opposition. The parties' briefs are limited to five (5) pages each.

In view of the foregoing, it is

ORDERED that Petitioner must file its Motion to Submit Supplemental Information, limited to five (5) pages, on or before May 7, 2019;

FURTHER ORDERED that Patent Owner must file its Opposition to Petitioner's Motion, if any, limited to five (5) pages, within seven calendar days of the filing date of Petitioner's Motion; and

FURTHER ORDERED that Petitioner must file its Reply to Patent Owner's Opposition, if any, limited to five (5) pages, within seven calendar days of the filing date of Patent Owner's Opposition.

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PETITIONER:

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