

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

BAD BOY, INC.,  
Patent Owner.

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Case IPR2018-01632  
Patent 9,730,386 B1

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

KORNICZKY, *Administrative Patent Judge*.

ORDER

Conduct of the Proceeding; Granting Motion to Submit Supplemental Information  
37 C.F.R. § 42.5

On April 26, 2019, the Board granted the request of Intimidator, Inc. and RF Products, Inc. (collectively, “Petitioner”) to file a Motion to Submit Supplemental Information Pursuant to 37 CFR § 42.123(a). Paper 25. On May 7, 2019, Petitioner filed its Motion. Paper 26 (“Mot.”). Patent Owner filed its Opposition to Petitioner’s Motion to Submit Supplemental Information. Paper 27 (“Opp.”). Petitioner filed its Reply in Support of Motion to Submit Supplemental Information. Paper 28 (“Reply”). After considering the Parties’ papers and the evidence of record, Petitioner’s motion 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. Petitioner’s motion meets the requirement of § 42.123(a)(1).

As to the requirement of § 42.123(a)(2), Petitioner asserts that its supplemental information (i.e., Exhibits 1019–1021) is relevant to challenged claims 1–4, 8, and 9 of US Patent No. 9,730,386 B1 for the which the trial has been instituted. Mot. 1–2, *passim*. Patent Owner disagrees. Opp. 1, *passim*. For the reasons discussed below, Petitioner’s motion meets the requirement of § 42.123(a)(2).

Petitioner's supplemental information is: (1) Exhibit 1019, a supplemental declaration of Mr. Roelof H. deVries; and (2) Exhibits 1020 and 1021, which are two of Patent Owner's manuals from 2007 and 2012, respectively. Mot. 1. Petitioner asserts that this "supplemental information is relevant to the issue of motivation to combine Melone and Foster, rendering claims 1–4, 8, and 9 obvious," and shows inconsistencies with positions advanced by Patent Owner. Mot. 1–2. The deVries Declaration, for example, asserts that the two manuals support the combination of Melone and Foster to render claims 1–4, 8, and 9 obvious and provide additional motivation to combine Melone and Foster. Ex. 1019, 4. Mr. deVries explains that the two manuals "depict commercial embodiments of the non-integrated pump and wheel motor disclosed in Melone employed with the pivoting suspension system of Foster to provide a pivoting drive system that moves upwardly or downwardly in conjunction with movement of its driven wheel for a zero turn radius lawn mower ('ZTR mover')." *Id.* ¶ 4. He also asserts that the manuals "provide evidence of skill in the art during the relevant time and also provide evidence of the industry's design goals and motivations" (*id.* ¶ 5), and "are inconsistent with Patent Owner's position in its Preliminary Response, as they show that a [person of ordinary skill in the art] would have been motivated to combine Melone and Foster, and did so" (*id.* ¶ 6).

Patent Owner opposes Petitioner's motion. Patent Owner asserts, in part, that Petitioner's supplemental information is a "new petition containing new issues that are inconsistent with the original Petition." Opp. 1, 3 (the de Vries Declaration "is dedicated to advancing new theories and arguments that were not raised in the Petition"). Notably, however, Patent Owner does not assert that Petitioner's supplemental information is irrelevant to the patentability of challenged claims 1–4, 8, and 9. To the contrary, Patent Owner contends that "the

Manuals support Patent Owner’s assertion that a [person of ordinary skill in the art] would not be motiv[at]ed to combine Melone’s transaxle with Foster’s cage suspension system,” and the two “Manuals describe a commercial product that demonstrates (without speculation) that a [person of ordinary skill in the art] would use a separate pump and motor system (not a transaxle) with a cage suspension like Foster’s.” Opp. 1.

Based on the present record, the evidence of record sufficiently demonstrates that Petitioner’s supplement information, Exhibits 1019–1021, is relevant to the claims for which the trial has been instituted, as required by § 42.123(a)(2). The supplemental information may be useful in determining the patentability or unpatentability of the challenged claims. Permitting admission of the supplemental information at this time also will allow Patent Owner the opportunity to address this information in its Response, if it chooses to do so, and will ensure an efficient deposition of Mr. deVries. At this stage of the proceeding, and for purposes of deciding Petitioner’s motion, we do not need to determine whether the supplemental information provides the motivation to combine Melone and Foster, or demonstrates inconsistencies in Patent Owner’s positions. The parties may present their arguments regarding these issues in Patent Owner’s Response and Petitioner’s Reply.

In view of the foregoing, it is ORDERED that Petitioner’s Motion to Submit Supplemental Information is granted.

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