

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EVAPCO DRY COOLING, INC.,
Petitioner,

v.

SPG DRY COOLING USALLC,
Patent Owner.

IPR2021-00687 (Patent 10,551,126 B2)
IPR2021-00688 (Patent 10,527,354 B2)¹

Before NEIL T. POWELL, GEORGE R. HOSKINS, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

O'HANLON, *Administrative Patent Judge*.

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

¹ This Order applies to each of the listed cases. The parties are not authorized to use this caption for any subsequent papers absent prior authorization from the Board.

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I. INTRODUCTION

On October 26, 2021, we authorized Petitioner via email to file a motion to submit supplemental information under 37 C.F.R. § 42.123(a). *See* Ex. 3002.² On November 9, 2021, Petitioner filed its Motion to Submit Supplemental Information. Paper 14 (“Motion” or “Mot.”). Patent Owner did not file an opposition to the Motion. For the reasons set forth below, we *grant* the Motion.

II. DISCUSSION

Petitioner seeks to submit as supplemental information Exhibit 1021, a second declaration of Jacob Robert Munford. Mot. 1. Petitioner argues that “Exhibit 1021 provides further testimony supporting the public accessibility and authenticity of the [Kröger] reference relied upon in the challenges set forth in the . . . Petition, with supporting appendices.” *Id.* at 2. Petitioner asserts that “Patent Owner does not oppose this motion.” *Id.* at 1.

Under 37 C.F.R. § 42.123(a), a party may file a motion to submit supplemental information if the following requirements are met: (1) a request for authorization to file such motion is made within one month of the date the trial was instituted; and (2) the supplemental information must be relevant to a claim for which trial has been instituted.

With respect to the first requirement of § 42.123(a), trial was instituted in this proceeding on September 24, 2021. Paper 11. Petitioner requested authorization to file the Motion via email sent on Monday,

² Citations herein refer to papers and exhibits filed in IPR2021-00687. Corresponding documents were filed in IPR2021-00688.

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October 25, 2021. *See* Ex. 3002. Therefore, Petitioner’s request was made within one month of the date the trial was instituted.

With respect to the second requirement of § 42.123(a), information is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence” and “the fact is of consequence in determining the action.” Fed. R. Evid. 401; *see also* 37 C.F.R. § 42.62 (“Except as otherwise provided in this subpart, the Federal Rules of Evidence shall apply to a proceeding.”). Exhibit 1021 is a declaration of Jacob Robert Munford, who provides testimony regarding the publication date of the Kröger reference relied upon in the Petition. *See, e.g.*, Ex. 1021 ¶¶ 8–9. We agree with Petitioner that Exhibit 1021 is relevant to a claim for which trial has been instituted.

In summary, we are persuaded that Petitioner has met its burden because it satisfies the requirements of § 42.123(a). We also are persuaded that Petitioner has met its burden because the supplemental information Petitioner seeks to submit does not change the grounds of unpatentability authorized in this proceeding, nor does it change the evidence initially presented in the Petition to support those grounds of unpatentability.

III. ORDER

In consideration of the foregoing, it is ORDERED that Petitioner’s motion to submit supplemental information under 37 C.F.R § 42.123(a) is *granted* with respect to Exhibit 1021.

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