

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY CORPORATION,
Petitioner,

v.

RAYTHEON COMPANY,
Patent Owner.

Case IPR2015-01201
Patent 5,591,678

Before JO-ANNE M. KOKOSKI, JENNIFER MEYER CHAGNON, and
JEFFREY W. ABRAHAM *Administrative Patent Judges*.

CHAGNON, *Administrative Patent Judge*.

DECISION

Granting Patent Owner's Motion to Correct and File
Supplemental/Replacement Exhibits

37 C.F.R. § 42.5(a)

Patent Owner Raytheon Company (“Raytheon”) filed a Motion to Correct and File Supplemental and Replacement Exhibits 2019, 2022, 2025–2027 (Paper 26, “Mot.”).¹ Raytheon attached proposed Exhibits 2019S, 2022R, 2025R, 2026R, and 2027R to its Motion. Petitioner Sony Corporation (“Sony”) filed an Opposition (Paper 36, “Opp.”) and Raytheon filed a Reply (Paper 37). For the following reasons, Raytheon’s Motion is granted.

With its Patent Owner Response, Raytheon submitted a Declaration of Dr. Eugene A. Fitzgerald (Ex. 1019). In his Declaration, Dr. Fitzgerald cites to several publicly available scientific textbooks. Ex. 2019 ¶¶ 35 n.3, 38 n.6, 41 n.7; Ex. 2022; Ex. 2025; Ex. 2026; Ex. 2027; *see* Reply 3 (noting the textbooks were publicly available). These citations did not include cites to particular pages of the textbooks, but appear to cite the textbooks in their entirety. Originally-filed Exhibits 2022, 2025, 2026, and 2027 included only the cover pages and table of contents of each of these textbooks.²

Raytheon asserts that “[d]ue to clerical errors, Patent Owner submitted incomplete public exhibits 2019, 2022, 2025, 2026, [and] 2027.”³ Mot. 1.

¹ As we previously noted in Paper 33, the parties are reminded that, pursuant to 37 CFR § 42.20(b), authorization is required prior to filing any motions not authorized in an order of general applicability or otherwise authorized during the proceeding. Raytheon did not seek such authorization prior to filing its Motion. For efficiency of the proceeding, we waive the prior authorization requirement of 37 CFR § 42.20(b) and consider the Motion. *See* 37 CFR § 42.5(b).

² Exhibit 2026 also included pages 151, 159, and 160 of the text.

³ Although Patent Owner relies on 37 C.F.R. § 42.104(c), which allows for correction of a clerical or typographical mistake in a *Petition* and does not apply to a Patent Owner Response, we exercise our discretion to consider Raytheon’s Motion under 37 C.F.R. § 42.5(a).

Raytheon seeks to file replacement versions for Exhibits 2022, 2025, 2026, and 2027 (proposed Exhibits 2022R, 2025R, 2026R, and 2027R), each of which includes the particular pages of the textbook on which Dr. Fitzgerald relied. Mot. 1–3. Raytheon also seeks to file a Supplemental Declaration of Dr. Fitzgerald (proposed Exhibit 2019S). *Id.* According to Raytheon, “Dr. Fitzgerald unintentionally omitted specific page citations from four publicly-available textbooks that he cited in footnotes in his original declaration.” Reply 1.

Sony argues in its Opposition that Raytheon “seeks to supplement the record by adding wholly new, substantive content,” rather than correct a clerical or typographical mistake. Opp. 2. Sony further argues that the proposed supplemental declaration includes “new substantive paragraphs characterizing [the] exhibits,” and that there is “no indication that the declaration had been prepared before [Raytheon’s] filing deadline but was inadvertently not submitted.” *Id.* at 3. Additionally, Sony asserts that the “newly-added pages [of the textbook exhibits] were not cited in the original declaration.” *Id.*

In Reply, Raytheon asserts that the “corrections significantly reduce the size of the original record and focus Dr. Fitzgerald’s testimony without prejudice to Petitioner.” Reply 1. According to Raytheon, providing the specific page citations from the textbooks reduces the record from the entire cited textbook, to only the pages cited thereof. *Id.* Raytheon also notes that the supplemental exhibits were provided to Sony in response to Sony’s objections to the original exhibits, and more than one month prior to Sony’s deposition of Dr. Fitzgerald. Reply 1–2.

We agree with Sony that the evidence presented does not show that the character of Raytheon's unintended omissions was a clerical or typographical error. We are persuaded, however, that the requested corrections to the textbook exhibits would benefit the Board and the public by providing a clearer and more complete record. Because Sony was in possession of these exhibits at the time of its cross-examination of Dr. Fitzgerald, we do not discern any prejudice to Sony in allowing the corrected exhibits to be filed. Accordingly, we exercise our discretion and authorize Raytheon to submit the proposed Exhibits 2022R, 2025R, 2026R, and 2027R in this proceeding. The document names assigned in PRPS should denote that the exhibit has been corrected. Original Exhibits 2022, 2025, 2026, and 2027, filed on March 11, 2016, will be expunged.

We are not persuaded, however, that ¶¶ 4, 6, and 7 of proposed Exhibit 2019S simply correct any unintended omission. Instead, these paragraphs newly characterize the exhibits in a manner not included in Dr. Fitzgerald's original Declaration. Raytheon, thus, is authorized to submit a supplemental Declaration of Dr. Fitzgerald limited to setting forth the specific pages of the textbook exhibits upon which he relied in his original Declaration (i.e., ¶¶ 1–3, 5, 8 of proposed Exhibit 2019S). The document name assigned in PRPS should denote that the exhibit is a supplemental version.

Accordingly, it is:

ORDERED that Raytheon's Motion to Correct and File Supplemental and Replacement Exhibits is *granted*;

FURTHER ORDERED that current Exhibits 2022, 2025, 2026, and 2027, filed on March 11, 2016, are expunged;

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FURTHER ORDERED that Raytheon is authorized to file corrected Exhibits 2022R, 2025R, 2026R, and 2027R. The document names should denote that the exhibit has been corrected;

FURTHER ORDERED that Raytheon is authorized to file a Supplemental Declaration of Dr. Fitzgerald in accordance with our instructions; and

FURTHER ORDERED that all corrected and supplemental exhibits are to be filed no later than May 19, 2016.

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