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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HemoSonics LLC,
Petitioner

v.

C. A. Casyso GMBH,
Patent Owner

Case IPR2018-00950

U.S. Patent No. 9,915,671

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
MOTION TO SUBMIT SUPPLEMENTAL INFORMATION**

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I. Introduction

Patent Owner's motion to submit supplemental information is an attempt to salvage certain claims of United States Patent No. 9,915,671 after its expert argued a lack of motivation to combine upon alleged facts which were later proven inaccurate. *See* Paper 19 at 11-15. Patent Owner offers statements made by Petitioner, addressing an unrelated patent with a different claim construction under a different legal standard, to assert that the attorney arguments presented in the foreign proceeding differs from the evidence presented in the current IPR. When viewed in light of the different patent disclosures, the different claim constructions and the different legal standards, statements in the EP Response should be afforded little to no weight. Therefore, Patent Owner has not satisfied the interest-of-justice requirement of 37 C.F.R. § 42.123(b). Moreover, Patent Owner's motion is also deficient because it states that it acted diligently in bringing the issue to the Board's attention but does not explain why it could not have reasonably obtained the information earlier despite acknowledging that it has been available for months. The Board should deny Patent Owner's motion to submit supplemental information.

II. Patent Owner has not shown that it met the standard of 37 CFR § 42.123(b) because it has not shown the information was not available sooner and that the interest of justice requires submission of this information

37 C.F.R. § 42.123(b) requires a party seeking to submit supplemental information more than one month after institution of a trial to provide a motion that “show(s) why the supplemental information reasonably could not have been obtained earlier, and why consideration of the supplemental information would be in the interest-of-justice.” Patent Owner deals with the first element in perfunctory fashion by stating that it first learned of the publically available response on May 10, 2019 and contacted the Board thereafter. Paper 23 at 2.

After failing to provide any facts to address the first element, Patent Owner launches into a discussion of various parts of the Federal Regulations that deal with sections unrelated to 37 C.F.R. § 42.123(b). Instead, the regulations discussed by Patent Owner relate to § 42.224 and appropriate discovery. *See* 77 Fed. Reg. 48,680 at 48963 [col. 2-3] and 48,719 [col. 3] respectively. Patent Owner does not discuss the portions of the regulations that address § 4.123(b). *See* 77 Fed. Reg. 48,680 at 48682, 48690, 48707-08. These portions explain the rationale for requiring that the movant show that it reasonably could not have obtained the information earlier. *Id* at 48707. In large part, Patent Owner seeks to sidestep these requirements by suggesting that Petitioner was obligated to submit the EP

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