

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRILLER, INC.,
Petitioner,

v.

TIKTOK PTE. LTD.,
Patent Owner.

Case IPR2022-00180
Patent 9,992,322 B2

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

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I. INTRODUCTION

Triller's request to submit 32 pages of new declaration testimony, with only a month until the Patent Owner's Response is due, is improper at this point in the proceeding. For the reasons discussed below, the Petitioner's Motion to Submit Supplemental Information should be denied.

II. STANDARD FOR GRANTING A MOTION TO SUBMIT SUPPLEMENTAL INFORMATION

The PTAB has articulated on numerous occasions that, in addition to satisfying the two requirements set forth by 37 C.F.R. § 42.123(a)¹, the Board should also consider if the requester "sufficiently persuaded [the Board] *why the supplemental information could not have been filed with the Petition* or why granting such a motion would be *more than an opportunity to supplement a petition after initial comments or arguments have been laid out by a patent owner.*"² *Ooma, Inc. v. Deep Green Wireless LLC*, IPR2017-01541, Paper 14 at 2–

3 (PTAB Jan. 23, 2018) (citing *Pacific Market Int'l, LLC v. Ignite USA, LLC*, IPR2014–00561, 2014 WL 6772228, Paper 23 at 3 (PTAB Dec. 2, 2014) (quoted

¹ 37 C.F.R. § 42.123(a) specifies that a motion to submit supplemental information be made within one month of institution, and that the supplemental information be relevant to a claim for which the trial has been instituted.

² All emphasis added unless otherwise noted.

in *Redline Detection, LLC v. Star Enivrotch, Inc.*, 811 F.3d 435, 446–49 (Fed. Cir. 2015))) (internal quotations omitted). Indeed, “Petitioner had the burden to present *in its Petition* information which would show a reasonable likelihood of success.” *Id.* “Supplemental information is *not intended to provide a petitioner an advantageous ‘wait-and-see’ opportunity* to use a patent owner’s preliminary response and [the Board’s] decision on institution in order to refine or bolster petitioner’s position.” *Id.* Requiring the Petitioner to submit such “supplemental information” in the form of supplemental declaration testimony at the time of the Petitioner’s Reply serves the PTAB’s goal of “securing the just, speedy, and inexpensive resolution of every proceeding.” *Id.*, 3–4; *see also Rackspace US, Inc. v. PersonalWeb Techs., LLC*, IPR2014-00057, Paper 16 at 5–6 (PTAB Apr. 30, 2014).

A Motion to Submit Supplemental Information is improper in instances in which “the petitioner sought to use the supplemental information to refine or bolster challenges originally presented in the petition.” *American Well Corporation v. Teladoc Health, Inc.*, IPR2021-00748, Paper 23 at 6–7 (PTAB Feb. 28, 2022). But this is exactly the scenario here, where Triller seeks to submit an additional 32 pages of declaration testimony directed to issues that not only were readily anticipated, but that were in fact raised (at a cursory level) by the Petition itself.

The Board has been clear that “[t]he filing of a petition for inter partes review should not be turned into a two-stage process.” *B/E Aerospace, Inc. v. Mag Aerospace Industries, LLC*, IPR2014-01510, Paper 37 at 5 (PTAB May 26, 2015). Allowing Triller to submit 32 additional pages of declaration testimony, addressing nearly every issue covered in the Patent Owner’s Preliminary Response (POPR) and the Institution Decision, would adopt this prohibited two-stage process.

Ultimately, granting of Triller’s Motion to Submit Supplemental Information would provide Triller with an improperly “advantageous ‘wait-and-see’ opportunity.” *Ooma*, IPR2017-01541, Paper 14 at 3–4. Denial of Triller’s motion is proper.

III. ARGUMENT

The 32 page declaration that Triller seeks to enter into the record differs significantly from the types of supplemental information the Board has previously allowed, such as supplemental declarations that “simply correct typographical or clerical errors in the [original declaration], without adding any substantive information to what was intended to be included in the declaration” or information that does not “change the evidence initially presented in the Petition to support those grounds of unpatentability.” *DraftKings Inc., v. Interactive Games LLC*, IPR2020-01110, Paper 16 at 9 (PTAB Mar. 11, 2021); *Group III Int’l, Inc. v. Targus Int’l, LLC*, IPR2021-00371, Paper 33 at 6 (PTAB Sept. 17, 2021). Triller

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