

Avocent Huntsville Corp and Liebert Corporation v. Cyber Switching Patents, LLC: Board Explains Differences and Limitations on Supplemental Evidence and Supplemental Information IPR2015-00690

Article By:

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Takeaway: Supplemental evidence under 37 C.F.R. § 42.64(b)(2) is limited to supporting the admissibility of originally filed evidence; it cannot be used to conduct discovery or introduce documents for the purpose of supporting an argument on the merits.

In its [Decision](#), the Board denied Petitioner's Motion to Submit Supplemental Information and Petitioner's Motion to Compel Testimony. 37 C.F.R. § 42.64(b)(2) states, in part, that a party relying on evidence to which an objection is timely served may respond to the objection by serving supplemental evidence within ten business days of service of the objection. In the event that the objecting party is not satisfied that the supplemental evidence overcomes the objection, the objecting party may preserve its objection by filing a motion to exclude the objected to evidence.

In the present case, Petitioner served supplemental evidence on Patent Owner in response to an evidentiary objection. The Board noted that Petitioner's Motion to Submit Supplemental Information was made within one month of institution. Petitioner seeks permission to enter a declaration attesting to the authenticity of publicly available webpages catalogued by the Internet Archive and the publicly available webpages. The Board stated that to the extent these items are used to support the admissibility of its originally filed evidence, they may be filed as exhibits. The Board noted that the items of evidence, described as "supplemental information" address Patent Owner's evidentiary objections and should have been served on Patent Owner in accordance with 37 C.F.R. § 42.64(b)(2). The Board denied Petitioner's motion to the extent that it would be an authorization for discovery.

As for Petitioner's motion to compel testimony of ServerTech, the Board stated that Petitioner has not provided an explanation for why it could not have obtained the requested evidence prior to filing its Petition. Thus, Petitioner has not met its burden in establishing that the requested compelled discovery is in the interest of justice.

AVOCENT HUNTSVILLE CORPORATION and LIEBERT CORPORATION v. CYBER SWITCHING PATENTS, LLC., IPR2015-00690 and IPR2015-00725

Paper 28: Decision Denying Petitioner's Motion to Submit Supplemental Information and Motion to Compel Testimony

Dated: October 2, 2015

Patent 7,550,870

Before: Michael R. Zecher, Glenn J. Perry, and Niel T. Powell

Written by: Perry

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