

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN WELL CORPORATION,
Petitioner,

v.

TELADOC HEALTH, INC.,
Patent Owner.

IPR2021-00748
Patent 8,179,418 B2

Before LYNNE H. BROWNE, KARA L. SZPONDOWSKI, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

ORDER

Denying Petitioner's Motion to Submit Supplemental Information
37 C.F.R. § 42.123(a)

I. INTRODUCTION

We authorized Petitioner American Well Corporation (“Petitioner”) to file a Motion to Submit Supplemental Information (Paper 12, “Motion”), Patent Owner TelaDoc Health, Inc. (“Patent Owner”) to file an Opposition (Paper 14, “Opp.”), and Petitioner to file a Reply (Paper 16, “Reply”). Petitioner seeks authorization to submit the Supplemental Declaration of Dr. Gregory S. Fischer as Exhibit 1021. Motion 1. Upon consideration of the documents and the parties’ arguments, and for the reasons stated below, the Motion is *denied*.

II. BACKGROUND

We instituted trial of all claims and on all grounds on October 7, 2021. Paper 10 (“Inst. Dec.”). However, in order to provide the parties with insight into the Board’s analysis of all grounds, we determined that the Petition, supported by the preliminary record, had failed to persuade us of a reasonable likelihood of prevailing with respect to some of the asserted claims and grounds. In particular, we found that the Petition had not sufficiently shown, for purposes of institution, that (1) the combination of Wang421 and Clements teaches claim 9; (2) the combination of Wang421, Clements, and Hampton teaches claims 6 and 11–20; (3) the combination of Wang421, Clements, Brown, and Brun teaches claims 7 and 21; and (4) the combination of Wang421, Clements, Brown, Hampton, and Brun teaches claims 22–24. Inst. Dec. 46, 64–65, 68–70. Along with its Petition, Petitioner submitted the Declaration of Dr. Gregory S. Fischer (“Fischer Declaration”). Ex. 1003.

Petitioner now seeks to submit the Supplemental Declaration of Dr. Gregory S. Fischer (Exhibit 1021) (“Supplemental Fischer Declaration”), which Petitioner contends:

is limited to (1) additional citations to art of record confirming that a POSITA would be motivated to combine Wang421, Clements, and Hampton to disclose claim 6; (2) a single correction to a citation to Wang421 in Dr. Fischer’s analysis of claim 9; (3) a ministerial correction to Dr. Fischer’s list of references in Ground 4, in order to clarify his opinion that Wang421, Clements, Brown, Brun, and Hampton render obvious claim 7; and (4) additional analysis to confirm that the art of record renders claim 21 obvious.

Pet. 1. Petitioner contends that “[t]he Supplemental Fischer Declaration addresses errors and omissions that the Board itself identified in its Institution Decision as bearing on the patentability of instituted claims 6, 7, 9, 11–21, and is therefore relevant to those claims.” *Id.* at 8. Petitioner further contends that submission of the Supplemental Fischer Declaration will neither prejudice Patent Owner nor delay the proceedings. *Id.*

Patent Owner responds that Petitioner “attempts to change, not supplement, its arguments and evidence in order to correct the identified deficiencies in the Petition that Petitioner could and should have addressed at the time the Petition was filed.” Opp. 1. Patent Owner argues that “[a]llowing Petitioner to change its arguments and evidence in this manner would not only violate the statutory particularity requirement of § 312(a)(3), but would also prejudice Patent Owner.” *Id.*

III. ANALYSIS

Petitioner bears the burden of proof to establish that it is entitled to the requested relief. 37 C.F.R. § 42.20. The requirements for submission of supplemental information under 37 C.F.R. § 42.123(a) are as follows:

(a) *Motion to submit supplemental information.* Once a trial has been instituted, a party may file a motion to submit supplemental information in accordance with the following requirements:

- (1) A request for the authorization to file a motion to submit supplemental information is made within one month of the date the trial is instituted.
- (2) The supplemental information must be relevant to a claim for which the trial has been instituted.

With respect to the first prong, Petitioner requested authorization to file a motion to submit supplemental information on October 13, 2021, which is less than one month after the date we entered our Institution Decision. *See* Paper 10 (entered October 7, 2021); *see* Mot. 8; Ex. 1022. Patent Owner does not dispute that the request for authorization was made within the one-month time period. *See generally* Opp. Thus, Petitioner’s request was timely under 37 C.F.R. § 42.123(a)(1).

As to the second prong, Petitioner contends the Supplemental Fischer Declaration is relevant “because it addresses four categories of inadvertent errors and omissions that the Board identified in its Institution Decision as bearing on the patentability of instituted claims 6, 7, 9, 11–21.” Motion 8–9.

Even assuming the Supplemental Fischer Declaration is relevant, § 42.123(a) “does not connote the PTAB must accept supplemental information so long as it is timely and relevant.” *Redline Detection, LLC v.*

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Star Envirotech, Inc., 811 F.3d 435, 445 (Fed. Cir. 2015) (citing *Changes to Implement Inter Partes Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents*, 77 Fed. Reg. 48,680, 48,708 (Aug. 14, 2012) (“Petitioners are encouraged to set forth their best grounds of unpatentability and supporting evidence in their petitions.”). “The guiding principle for the PTAB in making any determination is to ‘ensure efficient administration of the Office and the ability of the Office to complete IPR proceedings in a timely manner.’” *Id.* Timeliness and relevancy are “construed within the overarching context of the PTAB’s regulations governing IPR and general trial proceedings. Additionally, the PTAB has discretion to grant or deny motions as it sees fit.” *Id.* at 446–47 (citing 37 C.F.R. § 42.5(a), (b)).

Consistent with these guidelines, the Board has allowed the submission of supplemental information where the information did not change the grounds of patentability authorized in the proceeding, and did not change the evidence initially presented in the petition in support of those grounds. *See, e.g., DraftKings Inc., v. Interactive Games LLC*, IPR2020-01110, Paper 16 at 9 (PTAB Mar. 11, 2021) (granting entry of supplemental information 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, as reflected in the declaration itself”); *Group III Int’l, Inc. v. Targus Int’l, LLC*, IPR2021-00371, Paper 33 at 6 (PTAB Sept. 17, 2021) (granting entry of supplemental information where “the supplemental information . . . 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

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unpatentability”); *MED-EL Elektromedizinische Geräte Ges.m.b.H. v. Advanced Bionics AG*, IPR2020-00190, Paper 24 at 5 (PTAB Aug. 10, 2020) (granting motion to submit supplemental information where petitioner was “merely attempting to clarify arguments made in the Petition, not change its theories of unpatentability.”); *Pac. Mktg. Int’l, LLC v. Ignite USA, LLC*, IPR2014-00561, Paper 23 at 4 (PTAB Dec. 2, 2014) (granting entry of supplemental testimony that “does not operate to change any grounds of unpatentability . . . nor does it change the type of evidence initially presented in the Petition to support those grounds of unpatentability”); *Palo Alto Networks, Inc. v. Juniper Networks, Inc.*, IPR2013-00369, Paper 37 at 5 (PTAB Feb. 5, 2014) (granting entry of supplemental information confirming the public accessibility of the prior art, and where it did not change the grounds of unpatentability authorized in the proceeding or change the evidence initially presented in the petition to support the grounds of unpatentability).

In contrast, the Board has denied such motions where the petitioner sought to use the supplemental information to refine or bolster challenges originally presented in the petition, based on information in the preliminary response or institution decision. *See, e.g., Ooma, Inc. v. Deep Green Wireless LLC*, IPR2017-01541, Paper 14 at 3–4 (PTAB Jan. 23, 2018) (denying entry of supplemental testimony regarding the level of ordinary skill in the art; “Supplemental information is not intended to provide a petitioner an advantageous ‘wait-and-see’ opportunity to use a patent owner’s preliminary response and our decision on institution in order to refine or bolster petitioner’s position”); *Merck Sharp & Dohme Corp. v. Microspherix LLC*, IPR2018-00393, Paper 21 at 3 (PTAB Sept. 10, 2018)

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(denying motion to submit supplemental information where petitioner seeking to bolster its petition by responding to issues raised in the patent owner’s preliminary response and issues raised in the institution decision, and where petitioner was further trying to modify the reason to combine the references disclosed in the petition); *W. Digital Corp. v. Spex Techs., Inc.*, IPR2018-00082, Paper 22 at 9 (PTAB July 23, 2018) (denying entry of supplemental information where the supplemental information “presents a new ground for unpatentability based on different disclosures of [the asserted prior art reference] in an attempt to correct a weakness of the Petition we noted in our Decision on Institution”); *Laboratoire Francais Du Fractionnement et Des Biotechnologies S.A. v. Novo Nordisk Healthcare AG*, IPR2017-00028, Paper 22 at 4–5 (PTAB June 13, 2017) (denying entry of supplemental information where petitioner sought to bolster its petition by introducing new prior art teachings in response to arguments presented in patent owner’s preliminary response”); *Nissan N. Am., Inc. v. Diamond Coating Techs., LLC*, IPR2014-01548, Paper 37 at 3–4 (PTAB July 15, 2015) (denying entry of supplemental information where petitioner sought to submit an expert declaration that contained new opinions as to how a person of ordinary skill in the art would understand the disclosure in the references); *ZTE Corp. v. ContentGuard Holdings, Inc.*, IPR2013-00139, Paper 27 at 3 (PTAB July 30, 2013) (denying entry of supplemental information where petitioner submitted information in response to Board’s claim construction in the institution decision).

With these guidelines in mind, we now consider the supplemental information Petitioner seeks to submit.

A. Supplemental Information Regarding Claim 6

Claim 6 depends from claim 1 and recites “wherein said remote station provides a graphical user interface that can receive information and display a patient management plan.” Ex. 1001, 5:54–56. Petitioner relies on the combination of Wang421, Clements, and Hampton to teach this limitation. Pet. 52–61. In our Institution Decision, we found that Petitioner had not sufficiently shown that the combination of references would render claim 6 obvious because Petitioner’s proffered rationale for combining the references (Pet. 56–57) failed to address the limitations recited in claim 6, including the claimed “patient management plan.” Inst. Dec. 64. Instead, Petitioner’s proffered rationale referred to “data fields,” including the “patient information field” and “medical data field,” which are not recited in claim 6. Pet. 56–57. In the Institution Decision, we noted that this appeared to be a copy of the rationale to combine proffered in related IPR2021-00749, where the “patient information field” and “medical data field” were recited in claim 1 of U.S. Patent No. 10,471,588. Inst. Dec. 64.

Petitioner states that “Dr. Fischer’s analysis for why a POSITA would have been motivated to combine Clements and Hampton inadvertently did not include the words ‘patient management plan,’ as recited in claim 6.” Motion 2. Petitioner further asserts that “[t]he Petition also includes this inadvertent omission.” *Id.* at n.2. Petitioner contends that the Supplemental Fischer Declaration “clarifies why a POSITA would combine these references [and] would be useful to the Board in determining the patentability of claims 6–7 and 11–20.” *Id.* at 9. Petitioner asserts that “PTAB typically grants motions to submit supplemental information of this kind.” *Id.* Petitioner also contends that, like in *Pacific Marketing*, it “does

not seek to change the type of evidence proffered in Dr. Fischer’s motivation to combine analysis; it seeks only to add the word ‘patient management plan’ to Dr. Fischer’s original analysis, and add two citations to Clements that confirm why a POSITA would be motivated to combine Wang421, Clements, and Hampton to disclose claim 6.” *Id.* at 9–10; *see* Ex. 1021 ¶¶ 6–7. According to Petitioner, Dr. Fischer’s analysis “does not actually add any new citations to or discussion of Hampton,” and “the added citations . . . are to Clements, which was relied on extensively in the original declaration.” Reply 2.

Petitioner also asserts that Patent Owner would not be prejudiced. Motion 11–13. First, Petitioner asserts that Patent Owner was made aware of Petitioner’s desire to submit supplemental information, and Patent Owner has ample time to consider and address the “relatively minor issues raised” in the Supplemental Fischer Declaration, and to depose Dr. Fischer. Motion 11–12; *see also* Reply 2. Second, Petitioner asserts that the Supplemental Fischer Declaration is “limited in scope, and does not introduce new prior art or new issues.” Motion 12. Third, Petitioner asserts that “consideration of the supplemental information will not frustrate the Board’s ability to complete this proceeding in a timely manner” because it “will not alter the July 7, 2022, hearing date” and “there will be no delay from any time required to prepare the Supplemental Fischer Declaration” because it was filed as an exhibit. *Id.* at 12–13. Petitioner further contends that Patent Owner will have ample time to respond to the “changes.” Reply 2.

Patent Owner contends that Petitioner’s “characterization of this error as merely ‘not includ[ing] the words “patient management plan”’ understates the full extent of Petitioner’s error.” Opp. 5. According to Patent Owner,

the Supplemental Fischer Declaration “does not supplement the arguments and evidence originally presented in the Petition – it instead replaces those arguments and evidence in order to overcome the specific deficiencies identified by the Board.” *Id.* at 3. Moreover, Patent Owner asserts that the cases cited by Petitioner, including *Pacific Marketing*, “at best, relate to the common scenario where one party’s responses to another party’s contentions give rise to a dispute on the merits, thus necessitating additional, more detailed evidence to allow a full resolution on the merits.” *Opp.* at 3–4 (citing *P. Mktg.*, Paper 23 at 3–4; *Genzyme Therapeutic Prods. Ltd. P’ship v. Biomarin Pharm. Inc.*, 825 F.3d 1360, 1366 (Fed. Cir. 2016)). However, “the Supplemental Decl[aration] does not provide the Board with additional information clarifying Petitioner’s position in response to an argument raised by Patent Owner.” *Id.* at 4. Instead, “the proposed Supplemental Decl[aration] seeks to change, not supplement, the original arguments and evidence that Petitioner had the burden of identifying with particularity at the initial filing.” *Id.*

We agree with Patent Owner that the Supplemental Fischer Declaration “introduces new citations and conclusions by Dr. Fischer that supplant, not supplement, the original motivation-to-combine argument in the Petition,” which are “specifically tailored to address the deficiencies identified by the Board.” *Id.* at 5–6. That is, we agree with Patent Owner that Petitioner improperly seeks to change the evidence on which it relied in making its original challenge to claim 6. Although Petitioner is correct that the references have not changed (*e.g.*, Motion 12, Reply 2), Petitioner proffered *no* rationale in the Petition for combining the references to teach the “patient management plan” recited in claim 6. Petitioner now seeks to

provide that rationale. The Supplemental Fischer Declaration includes new opinions, and new underlying support for those opinions by way of the two new citations to Clements. *See* Motion 9–10 (stating that the Supplemental Fischer Declaration “add[s] two citations to Clements that confirm why a POSITA would be motivated to combine [the references]”).

We also agree with Patent Owner that *Pacific Marketing* does not support Petitioner’s position, and disagree with Petitioner that this is the type of situation where the Board “typically” allows supplementation. This is not simply a case where Petitioner seeks to bolster a position that had already been taken. Rather, without the proffered Supplemental Fischer Declaration, Petitioner has not provided *any* rationale at all for combining the references. The situation here is the type that *Pacific Marketing* warns against. *See P. Mktg.*, Paper 23 at 3 (“the provision for submitting supplemental information is not intended to offer a petitioner a routine avenue for bolstering deficiencies in a petition . . . a petitioner should not expect § 42.123 to present a ‘wait-and-see’ opportunity to supplement a petition after initial comments or arguments have been laid out by a patent owner.”) Indeed, Petitioner concedes that it is “addressing errors and omissions that the Board itself identified in the Institution Decision.” Motion 8.

Petitioner also attempts to distinguish the situation here from that in *Nissan*. Petitioner states that it “did not sit on its hands or seek to have the Board narrow the issues. Rather, Petitioner was first informed of the errors by the [Institution Decision], and now seeks to correct the errors through a very limited and tailored supplemental declaration. No reasonable person could conclude that Petitioner intentionally introduced errors into the Petition in order to game the system.” Reply 4.

Petitioner's arguments are not persuasive. In *Nissan*, Petitioner sought to admit an expert declaration that included testimony explaining, *inter alia*, a person of ordinary skill in the art's understanding of the references. *Nissan*, Paper 27 at 2. The Board found that such testimony "includes new opinions with respect to what a person having ordinary skill in the art would understand is disclosed by [the reference], which Petitioner concedes it seeks to submit because the decision to institute narrowed the scope of the proceeding," and denied Petitioner's motion. *Id.* at 2–3.

Similarly, here, Petitioner seeks to submit new testimony from Dr. Fischer establishing a rationale for the combination of Wang421, Clements, and Hampton, which it concedes is a result of errors pointed out in the Institution Decision. Petitioner repeatedly refers to such errors as "inadvertent" and not intentional, and attempts to distinguish the situation here on that basis, but we do not find this argument persuasive. Whether inadvertent or not, Petitioner is nonetheless changing the evidence it relied upon in the Petition.

Our regulations require that the Petition must "[p]rovide a statement of the precise relief requested for each claim challenged," including "[h]ow the construed claim is unpatentable," "where each element of the claim is found in the prior art," and "identifying specific portions of the evidence that support the challenge." 37 C.F.R. § 42.104(b); *see also* 35 U.S.C. § 312(a)(3) ("the petition identifies, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim"); 35 U.S.C. § 314(a) (Petitioner has the burden to present in the Petition information which would show a reasonable likelihood of success). This

does not mean that the evidence may not be supplemented; however, in this particular case, Petitioner's proposed supplementation goes beyond merely supplementing its position – it changes it entirely. Petitioner identifies no statute, regulation, or Board decision as precedent permitting it to use supplemental information to fill the type of evidentiary void (whether inadvertent or not) left open by the Petition. Moreover, there is no reason why Petitioner should expect the Board or Patent Owner to identify these types of errors and omissions in the Petition, when such errors could have easily been identified by Petitioner prior to filing the Petition.

It would run counter to the purposes of 37 C.F.R. §§ 42.1(b), 42.104(b) and 35 U.S.C. § 312(a), to permit Petitioner to wait until after issuance of our Institution Decision to provide the reasons why one skilled in the art allegedly would have combined Wang421, Clements, and Hampton. Denying entry of supplemental information that effectively changes the evidence originally relied upon in a petition – whether inadvertent or not – is in accord with the statutory requirement that a petition must identify, with particularity, the evidence supporting the challenge to each claim. 35 U.S.C. § 312(a)(3).

B. Supplemental Information for Claims 7 and 21

1. Claims 7 and 21 – Listing of References

We found that Petitioner's contentions as to claim 7 included Wang421, Clements, Brown, and Brun, but excluded Hampton, even though claim 7 depends from claim 6. Inst. Dec. 68. We similarly found that Petitioner's contentions as to claim 21 excluded Hampton, even though claim 21 depends from claim 18, a claim where Petitioner relied on Hampton as part of the combination. *Id.* at 69. Petitioner asserts that the

“omission was clerical in nature,” and no substantive analysis of Hampton as it relates to claims 7 and 21 was omitted. Motion 3. Patent Owner contends that Petitioner has changed the references it relies upon for claims 7 and 21, to add the Hampton reference. Opp. 7–8.

Petitioner analyzes claims 7 and 21 together in the Petition. Pet. 66–67. Although Petitioner failed to include Hampton in the heading of this section (Pet. 65) and in the statement of grounds (Pet. 3), we note that in the body of the Petition, in the analysis for claims 7 and 21, Petitioner refers to the “Wang421-Clements-**Hampton**-Brown-Brun” combination. Pet. 66–67 (emphasis added).¹ Petitioner’s Supplemental Fischer Declaration testimony adds two paragraphs that, essentially, simply state that Hampton was considered as part of the combination for claims 7 and 21. Ex. 1021 ¶¶ 8–9. Petitioner is not precluded from presenting such argument, regarding the listing of references, in its Reply, to the extent that it does not submit new evidence or arguments. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide, p. 73 (November 2019)² (“CTPG”) (“[T]he Board will permit the petitioner, in its reply brief, to address issues discussed in the institution decision . . . [but] may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a prima facie case of unpatentability.”). In light of the foregoing, we find Petitioner’s Motion *moot* as to its arguments on claim 7 and *moot* as to these arguments on claim 21.

¹ Petitioner does not make this argument. Rather, Petitioner simply contends that it inadvertently failed to include Hampton. *See* Motion 3.

² Available at [tpgnov.pdf \(uspto.gov\)](https://www.uspto.gov/tpgnov.pdf).

2. *Claim 21 – Patient Management Plan*

Claim 21 depends from claim 18 and recites “the patient management plan is a stroke evaluation.” Ex. 1001, 6:44–45. In the Petition, Petitioner’s full analysis of claim 21 stated “See element [7] in Section V.D.3; AW-1003 ¶ 164.” Pet. 70. As set forth in the Institution Decision, this analysis relied entirely on the analysis of claim 7, which recites a “medical tool,” and not a “patient management plan,” and therefore, failed to sufficiently show the references taught the limitations in claim 21. Inst. Dec. 69.

Petitioner now seeks to submit, in the Supplemental Fischer Declaration, “additional analysis about why the art of record renders claim 21 obvious.” Motion 11; *see also id.* at 4. The Supplemental Fischer Declaration addresses the “patient management plan” in claim 21, Hampton’s purported disclosure of the foregoing, explains the understanding of a person of ordinary skill in the art, and provides reasoning for the combination of references. *See* Ex. 1021 ¶ 11.

Patent Owner contends that Petitioner “attempts to change its arguments and evidence” and “introduces **for the first time** significant argument and evidence pertaining to claim 21’s ‘patient management plan.’” Opp. 9.

We agree with Patent Owner that Petitioner improperly seeks to change the evidence on which it relied in making its original challenge to claim 21, for similar reasons as discussed above in Section III.A. As noted, Petitioner’s complete analysis in the Petition of claim 21 simply referred back to claim 7, which does not recite the “patient management plan.” Now Petitioner seeks to introduce a full analysis of this limitation, including reasons for combining the references to teach the limitations recited in claim

21. Here, again, Petitioner’s proposed supplementation goes beyond merely supplementing its position – it changes it entirely. Under such circumstances, denying entry of supplemental information that effectively changes the evidence originally relied upon in a petition – whether inadvertent or not – is in accord with the statutory requirements.

C. Supplemental Information for Claim 9

Claim 9 recites “wherein said mobile robot includes a monitor coupled to a camera of said remote station.” Ex. 1001, 5:61–62. In the Petition, Petitioner stated “Wang421 discloses this limitation in that Wang421 discloses ‘said mobile robot includes a monitor coupled to a camera of said remote station.’ AW-1005, [0024] (*The robot camera 38 is coupled to the remote monitor 24 so that a user at the remote station 16 can view a patient*’). AW-1003, ¶116.” Pet. 40–41 (emphasis added). In the Institution Decision, we found that the foregoing italicized disclosure from Wang421 – which was all that Petitioner and Dr. Fischer cited to disclose this limitation – did not support Petitioner’s contentions. Inst. Dec. 46.

Petitioner states that “[d]ue to an inadvertent copyediting error, Dr. Fischer’s analysis of claim 9 incorrectly cited to paragraph 24 of Wang421 (as opposed to paragraph 25), and further inadvertently quoted the wrong sentence within paragraph 25 of Wang421. The intended cite was to paragraph 25 of Wang421.” Motion 2–3. Petitioner, therefore, seeks to submit testimony in the Supplemental Fischer Declaration that cites to paragraph 25 of Wang421. *Id.* (citing Ex. 1021 ¶ 13).

Patent Owner argues that “Petitioner now seeks to replace, not supplement, its original argument in the Petition by relying upon a new

statement in Wang421 with a different meaning that was not previously identified.” Opp. 7.

We agree with Patent Owner that Petitioner improperly seeks to change the evidence on which it relied in making its original challenge to claim 9, for similar reasons as discussed above in Section III.A. Although Petitioner contends that this was an “inadvertent copyediting error,” both the Petition and Dr. Fischer’s Declaration cited to paragraph 24 in Wang421, and *even directly quoted a sentence from paragraph 24*. See Pet. 40–41; Ex. 1003 ¶ 116. Now Petitioner seeks to rely on paragraph 25 and its disclosure in Wang421 to teach the limitation in claim 9. Whether an inadvertent copyediting error or not, Petitioner’s proposed supplementation goes beyond merely supplementing its position – it changes it entirely. Under such circumstances, denying entry of supplemental information that effectively changes the evidence originally relied upon in a petition – whether inadvertent or not – is in accord with the statutory requirements.

D. Conclusion

For the foregoing reasons, Petitioner has not met its burden of proving it is entitled to the requested relief. Accordingly, Petitioner’s motion to submit supplemental information is *denied*.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner’s Motion to Submit Supplemental Information (Exhibit 1021) (Paper 12) is *denied*; and

FURTHER ORDERED that Exhibit 1021 is to be expunged from the record of this proceeding.

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