



PTAB Allows Supplementation of Record with Evidence of Public Availability of Prior Art Reference

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In making its determination, the PTAB considered not only the explicit requirements of the regulation—i.e., (1) that the request for authorization to file the motion be made within one month of institution, and (2) that the supplemental information be relevant to a claim for which trial has been instituted—but also the Federal Circuit’s instruction that a “guiding principle” underlying any determination, including determinations on motions to supplement, is to “ensure efficient administration of the Office and the ability of the Office to complete [*inter partes* review] proceedings in a timely manner.” *Redline Detection LLC v. Star Envirotech, Inc.*, 811 F.3d 435, 445 (Fed. Cir. 2015). The PTAB held that the Petitioners’ request to file a motion was timely made within one month of the institution decision and that the declaration was relevant because it pertained to the public availability and authenticity of one of the references that provided the bases for each of the instituted grounds in this proceeding. The PTAB noted that Petitioners requested the declaration from the IEEE before the filing of their petition, but did not receive the declaration until after the petition was filed. However, Petitioners promptly shared the declaration with the Patent Owner, so the Patent Owner was aware of the declaration before filing its Preliminary Response. The PTAB further held that, because the declaration was timely submitted and relevant to the proceeding, Petitioners’ motion comported with the guiding principle of efficiency.

RPX Corp. v. IYM Tech. LLC, IPR2017-01888, Paper 16 (PTAB May 14, 2018)

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