

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TERUMO BCT INC.,

Petitioner

v.

HAEMONETICS CORP.,

Patent Owner

Case No. PGR2025-00078

U.S. Patent No. 12,171,916

**OPPOSITION TO MOTION TO CORRECT CLERICAL ERROR UNDER
37 C.F.R. § 42.104(c) AND TO SEEK LEAVE FOR DR. FLETCHER TO
SERVE AN AMENDED DECLARATION**

Petitioner's Motion to correct a purported clerical error should be denied. The Motion is procedurally improper, untimely, and would unfairly advantage Petitioner for Patent Owner's own diligence.

The Motion is brought pursuant to the wrong standard. Petitioner seeks leave to correct its post-grant review petition (the "Petition") under 37 C.F.R. § 42.104(c), which governs correction for *inter partes* review petitions. Petitioner should have sought leave pursuant to 37 C.F.R. § 42.204(c), which governs correction for post-grant review petitions. On this basis alone, Petitioner's request to correct its Petition and serve an amended expert declaration should be denied.

Petitioner's request is untimely. Petitioner seeks leave to add an entirely omitted claim limitation—to *both* the Petition and expert declaration—nearly three months after filing. Notably, the nine-month deadline to file a post-grant review petition had passed by the time Petitioner filed its Motion. The Motion was also filed after Patent Owner submitted its Request for Discretionary Denial, which pointed out the omission, as Petitioner admits. Mot. at 2.

Petitioner's omission was neither clerical nor typographical. Petitioner concedes that it overlooked a claim limitation, and Dr. Fletcher omitted the *same* limitation. Mot. at 1-2. While a Petitioner may correct a ministerial oversight, the Board has found that the same error appearing in the Petition and expert declaration is substantive, not clerical, and denied the motion to correct. *See International Bus.*

Mach. Corp. v. Intellectual Ventures II, LLC, IPR2014-00660, Paper 17 at 2 (Jul. 31, 2014); *Nitro Fluids, LLC v. Cameron Int’l Corp.*, IPR2019-00852, Paper 20 at 5 (Nov. 12, 2019); *Amkor Tech., Inc. v. Tessera, Inc.*, IPR2013-00242, Paper 32 at 4 (Aug. 29, 2013) (“[Expert’s] analysis is subject to the same types of inconsistencies that are found in the Petition, and does not support that the errors in the Petition were simply clerical or typographical”). It is not surprising that both the Petition and Dr. Fletcher’s declaration excluded the same claim limitation because the declaration and Petition are virtually identical. *See* Paper 6 at 17.

Even if clerical, Petitioner’s proposed correction would prejudice Patent Owner. In both cases cited by Petitioner, the Petitioner notified the Patent Owner of the error within two weeks of filing, giving ample time to address it in the Preliminary Response. *See Hum Indus. Tech., Inc. v. Amsted Rail Co.*, IPR2023-00538, Paper 9 at 5 (Apr. 11, 2023); *T-Mobile US, Inc. v. Adv. Media Net., LLC*, IPR2016-00347, Paper 10 at 3 (Mar. 2, 2016)¹. Here, Patent Owner identified the omission, and the Preliminary Response is due in less than a week.

The prejudice to Patent Owner is, therefore, concrete. Because the Motion cannot change the Petition’s filing date, any correction at this juncture would now prejudice Patent Owner. 37 C.F.R. § 42.204(c). The missing limitation is not

¹ The motion for correction filed in the *T-Mobile* case is also inapposite as it was filed unopposed.

“substantively similar” to those in the Petition, as Petitioner suggests. Mot. at 2. Indeed, Petitioner refers to *four* separate limitations to cover the missing limitation in claim 7, yet none require that the controller is programmed to “determine a target volume of plasma product and/or raw plasma based at least in part on the weight and hematocrit” as in the omitted limitation of claim 7. Substance would necessarily be required to address the missing limitation in the Petition.²

Petitioner was not diligent. Petitioner admits that Patent Owner, not Petitioner, identified the omission in Patent Owner’s discretionary denial briefing. Mot. at 2; Paper 6 at 17-18. This is not diligence on Petitioner’s part, but a belated review of its own Petition, nearly three months after filing, triggered by Patent Owner’s briefing. Petitioner should not be given another bite at the apple to correct this Petition and expert declaration, along with three others³, particularly where Petitioner filed this Motion under the incorrect standard. Granting the Motion would not result in a just or speedy resolution and would improperly prejudice Patent Owner, who has already filed its discretionary briefing acknowledging Petitioner’s omissions across these proceedings.

² Notably, Petitioner fails to include a redline of the proposed changes and Patent Owner is left to speculate as to what substance would be added by the correction. *See Hum Indus.*, IPR2023-00538, Paper 9 at 3, 5 (referring to the redline in granting the correction); *T-Mobile*, IPR2016-00347, Paper 10 at 2 (same).

³ Petitioner has simultaneously moved to correct three petitions and previously filed a corrected petition in PGR2026-00009, without leave.

Opp. to Mot. to Correct Clerical Error & Serve Amended Expert Declaration
PGR2025-00078

Respectfully submitted,

/Erik B. Milch/

Erik B. Milch (Reg. No. 42,887)
Proskauer Rose LLP
1001 Pennsylvania Ave., NW
Suite 600
Washington, DC 20004
Tel: (202) 416-6800
emilch@proskauer.com

Dated: December 9, 2025

Attorney for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I hereby certify that on December 9, 2025, I caused a complete copy of Patent Owner's Opposition to Motion to Correct Clerical Error Under 37 C.F.R. § 42.104(c) and to Seek Leave for Dr. Fletcher to Serve an Amended Declaration, to be served on the Petitioner as follows:

Via and Electronic Mail to Petitioner's attorneys of record:

John M. Caracappa, Reg. No. 43,532
jcaracappa@steptoe.com

Katherine D. Cappaert, Reg. No. 71,639
kcappaert@steptoe.com

Matthew Y. Sim, Reg. No. 77,422
msim@steptoe.com

Scott Chappell, Reg. No. 76,333
schappell@steptoe.com

STEPTOE LLP
1330 Connecticut Avenue N.W.
Washington, D.C. 20036
Tel: (202) 429-3000
Fax: (202) 429-3902

/Erik B. Milch/
Erik B. Milch (Reg. No. 42,887)