

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOYOTA MOTOR NORTH AMERICA, INC., SUBARU OF
AMERICA, INC., AMERICAN HONDA MOTOR CO., INC., NISSAN NORTH
AMERICA, INC., FORD MOTOR COMPANY, JAGUAR LAND ROVER
NORTH AMERICA, LLC, and VOLVO CARS OF NORTH AMERICA, LLC,
Petitioner,

v.

CRUISE CONTROL TECHNOLOGIES LLC,
Patent Owner.

Case IPR2014-00280
Patent 6,324,463

Before JOSIAH C. COCKS, HYUN J. JUNG, and GEORGE R. HOSKINS,
Administrative Patent Judges.

COCKS, *Administrative Patent Judge.*

INITIAL CONFERENCE SUMMARY

Conduct of the Proceeding
37 C.F.R. § 42.5

1. Introduction

On July 30, 2014, an initial conference call was conducted. John Rabena represented Petitioner, Toyota et al. (“Petitioner” or “Toyota”). John Kasha represented Patent Owner, Cruise Control Technologies, LLC (“Patent Owner”). Judges Cocks, Jung, and Hoskins participated on behalf of the Board. The purpose of the call was to determine if the parties have any issues concerning the Scheduling Order (Paper 18) and to discuss any motions contemplated by the parties.

2. Related Matters

Counsel for Patent Owner indicated that U.S. Patent 6,324,463 (“the ’463 patent”) is subject to a concurrent reexamination proceeding (90/012,841) before the United States Patent & Trademark Office, and that the proceeding is pending appeal to the Board.

The panel was informed that all litigation involving the ’463 patent had been moved to the Eastern District of Michigan from the District of Delaware, and is currently stayed.

3. Scheduling Order

Neither of the parties indicated any issues in connection with the Scheduling Order. During the call, the panel reminded the parties that, without obtaining prior authorization from the Board, they may stipulate to different dates for DATES 1-5¹ by filing an appropriate notice with the Board.

¹ The parties may not stipulate to changes for any other DUE DATE.

4. *Protective Order*

The parties have not discussed a protective order at this time. No protective order has been entered. At this time, neither party anticipated the need for a Protective Order in this proceeding. Should circumstances change, the parties are reminded of the requirement for a protective order when filing a Motion to Seal. 37 C.F.R. § 42.54. If the parties have agreed to a proposed protective order, including the Standing Default Protective Order, 77 Fed. Reg. 48756, App. B (Aug 14, 2012), they should file a signed copy of the proposed protective order with the motion to seal. If the parties choose to propose a protective order other than or departing from the default Standing Protective Order, they must submit a joint, proposed protective order, accompanied by a red-lined version based on the default protective order in Appendix B to the Board's Office Patent Trial Practice Guide. *See id.* at 48769.

5. *Discovery*

The parties are reminded of the discovery provisions of 37 C.F.R. §§ 42.51-52 and the Office Trial Practice Guide. *See* 77 Fed. Reg. at 48761-2. Discovery requests and objections are not to be filed with the Board without prior authorization. The parties may request a conference with the Board if the parties are unable to resolve discovery issues between them. A motion to exclude, which does not require Board authorization, must be filed to preserve any objection. *See* 37 C.F.R. § 37.64, Office Trial Practice Guide, 77 Fed. Reg. at 48767. There are no discovery issues pending at this time.

Each party may depose experts and affiants supporting the opposing party. The parties are reminded of the provisions for taking testimony found at 37 C.F.R. § 42.53 and the Office Trial Practice Guide at 77 Fed. Reg. at 48772, App. D.

6. *Motions*

The parties are reminded that, except as otherwise provided in the Rules, Board authorization is required before filing a motion. 37 C.F.R. § 42.20(b). A party seeking to file a motion should request a conference to obtain authorization to file the motion. No motions are authorized in this proceeding at this time, other than as already authorized by Rule.

7. *Motion to Amend*

Although Patent Owner may file one motion to amend the patent by cancelling or substituting claims without Board authorization, Patent Owner must confer with the Board before filing a motion to amend. 37 C.F.R. § 42.121(a). Patent Owner, as the moving party, bears the burden of proof in establishing entitlement for the requested relief. *See* 37 C.F.R. § 42.20(c). A motion to amend must explain in detail how any proposed substitute claim obviates the grounds of unpatentability authorized in this proceeding, explain how any substitute claim is patentable generally over the prior art known to the Patent Owner, and clearly identify where the corresponding written description support in the original disclosure can be found for each substitute claim.

Counsel for Patent Owner expressed that he was aware of the distinction in amendment practice between *inter partes* review proceedings and other proceedings such as examination, reexamination, and reissue proceedings. During the call, Patent Owner informed the panel that it is generally contemplating a Motion to Amend. The panel requested that the Patent Owner schedule a conference call with Board and the opposing party at least one week prior to DUE DATE 1, so as to discuss issues in connection with a Motion to Amend in this proceeding and to satisfy the conferral requirement of § 42.121(a).

For further guidance regarding the requirements of a Motion to Amend, Patent Owner is directed to prior Board decisions concerning motions to amend, including *Nichia Corporation v. Emcore Corporation*, IPR2012-00005, Paper No. 27 (June 3, 2013); *Idle Free Systems, Inc. v. Bergstrom, Inc.*, IPR2012-00027, Paper No. 26 (June 11, 2013), Paper No. 66 (January 7, 2014); *ZTE Corp. v. ContentGuard Holdings*, IPR2013-00136, Paper No. 33 (November 7, 2013); and *Invensense, Inc. v. STMicroelectronics, Inc.*, IPR2013-00241, Paper No. 21, (January 9, 2014).

8. *Other Matters*

This involved *inter partes* review proceeding is related to four other proceedings (IPR2014-00279, -00281, -00289, and -00291), all of which are directed to the '463 patent. During the call, counsel for Patent Owner inquired with the Board whether it was able to submit different Motions to Amend in the five related proceedings. After conferring, the panel acknowledged that, given the current circumstances of these proceedings, Patent Owner could submit different Motions to Amend in the five proceedings.

Counsel for Patent Owner also queried whether he was required to contact counsel separately for all five proceedings when attempting to confer with opposing counsel for matters such as scheduling depositions of declarants. The panel noted that in *inter partes* review proceedings, the rules require designation of lead counsel and at least one back-up counsel, who may be contacted for such scheduling matters. The panel observed that in each of the five noted proceedings here, a dedicated lead counsel and at least one back-up counsel have been so designated, and are thus available for consultation with respect to the noted matters. The panel indicated that the parties should work together to schedule

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