

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioners,

v.

CRUISE CONTROL TECHNOLOGIES LLC,

Patent Owner.

Case IPR2014-00281

Patent 6,324,463

FORD MOTOR COMPANY, JAGUAR LAND ROVER NORTH AMERICA LLC, AND VOLVO CARS OF NORTH AMERICA LLC'S
OPPOSITION TO PATENT OWNER'S MOTION FOR JOINDER OF
INTER PARTES REVIEW PROCEEDINGS

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I. INTRODUCTION

Patent Owner Cruise Control Technologies LLC's ("CCT") motion for joinder should be rejected. First, as a matter of law, joinder of the five petitions seeking *inter partes* review of U.S. Patent No. 6,324,463 (the "'463 Patent") is statutorily impermissible since joinder is only available *after* the institution date of an *inter partes* review. Moreover, the PTAB has found that joinder is not proper where petitions seek invalidity based on different primary references, as here, where each of the five petitions presents unique primary references.

Next, while CCT argues that it would be subject to undue discovery burden absent joinder, the PTAB has already resolved that concern by assigning all five petitions to the same panel of judges, who can set coordinated schedules, hearings, and discovery. To the extent discovery may be further coordinated, the discovery rules permit the parties to do so by agreement, or CCT may seek it by motion.

In any case, CCT's assertion that it will be "significantly prejudiced" absent joinder is disingenuous given its conduct and resources. In district court, CCT separately sued *fifteen* different automotive companies on the '463 patent.¹ CCT is just one of over a dozen related non-practicing entities founded and/or controlled by a former patent litigator who has brought countless patent infringement lawsuits across the country.

CCT's actual goal as expressed in its motion papers is to combine the five petitions into one, thereby eliminating grounds raised in each petition. In this way,

¹ Seven of these fifteen defendants filed the five IPR petitions for which CCT seeks joinder.

CCT attempts to deny petitioners due process by combining separate proceedings (for which substantial fees have been paid) into one, prior to any decision on the merits of their institution.

Finally, CCT's invented "one petitioner, one voice" rule is satisfied because only a single Lead counsel will prosecute each petition. Even if it were not satisfied, there is no basis for the extraordinary remedy CCT seeks – denial of institution.

II. FACTUAL BACKGROUND

Petition No. 2014-00281 for *inter partes* review of the '463 Patent was requested by seven co-petitioners². Latham & Watkins, representing three of the petitioners Ford, JLR, and Volvo (collectively, "Ford"), prepared that petition ("Ford's Petition").

All seven co-petitioners have the same interests in the Ford Petition and have agreed to speak with a common voice in connection with the Ford Petition. Only one Lead counsel – Matthew Moore of Latham & Watkins – is designated in the Ford Petition and he is the common voice for all seven co-petitioners in both oral and written representation. Michael B. Eisenberg, also of Latham & Watkins, and four additional counsel are listed as Backup counsel to Mr. Moore. Should

² Ford Motor Company (Ford"), Jaguar Land Rover North America LLC ("JLR"), Volvo Cars of North America LLC ("Volvo"), Toyota Motor North America, Inc. ("Toyota"), American Honda Motor Co., Inc. ("Honda"), Nissan North America Inc. ("Nissan"), and Subaru of America ("Subaru").

Mr. Moore become unavailable, he and Backup counsel have agreed to coordinate with one another so that only one Backup counsel will act as lead counsel and speak on behalf of all co-petitioners for the Ford Petition.³

Similarly, Toyota, Honda, Nissan, and Subaru have each filed their own separate petitions on the '463 Patent.⁴ Although Ford is a co-petitioner and Mr. Moore is Backup counsel in each of those four other petitions, Ford will not take positions that are contrary to those presented by Lead counsel. Further, Ford agreed that the Lead counsel listed in each of those four other petitions will speak on Ford's behalf for those petitions. Should the need arise for Backup counsel to assume the role of Lead counsel, the co-petitioners for the applicable petition will coordinate to designate a new Lead counsel.

III. ARGUMENT

³ CCT takes the Board's authorization order out of context by alleging that petitioners admitted that they will not speak with one voice in any one petition. IPR 2013-00281, paper 15 ("CCT's Motion"), p. 10 (PTAB Apr. 24, 2014) (citing IPR2014-00279, paper 14, p. 3.) But, as is clear in the Order, petitioners actually stated that *only if* the petitions are *joined* would the petitioners likely not be able to speak with a common voice, as that joint proceeding would involve five lead counsels, each representing a separate party. Conversely, if not joined, each separate petition will have a single voice – the listed Lead counsel.

⁴ IPR2014-00280 – "Toyota's Petition"; IPR2014-00289 – "Honda's Petition"; IPR2014-00291 – "Nissan's Petition"; and IPR2014-00279 – "Subaru's Petition."

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