

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOYOTA MOTOR NORTH AMERICA, INC., FORD MOTOR COMPANY,
JAGUAR LAND ROVER NORTH AMERICA LLC, SUBARU OF AMERICA
INC., VOLVO CARS OF NORTH AMERICA LLC, AND NISSAN NORTH
AMERICA INC.¹,
Petitioners

v.

CRUISE CONTROL TECHNOLOGIES LLC,
Patent Owner

CASE IPR: 2014-00291
Patent 6,324,463

PETITIONERS REPLY

Mail Stop **Patent Board**
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

¹ Nissan North America Inc. (“Nissan”) and Patent Owner have filed a Joint Motion to Terminate this proceeding with respect to Nissan (Paper 26), which is currently awaiting a decision.

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I. Introduction

Petitioner respectfully submits that the Board is correct in its initial finding that claims 1-5, 12-16, 18, 19, 21, 25-31, and 34-36 are unpatentable, and requests a final written decision canceling claims 1-5, 12-16, 18, 19, 21, 25-31, and 34-36.

II. PROMETHEUS ANTICIPATES CLAIMS 1-3, 5, 12-14, 18-19, 25-27, 29-31 AND 34-36 OF THE '463 PATENT.

A. Prometheus is prior art to claims 1-3, 5, 12-14, 18, 19, 25-27, 29-31, and 34-36 of the '463 Patent under 35 U.S.C. § 102(b).

As a preliminary matter, Patent Owner complains that certain uncited sections of Ex. 1003 bear different dates (all in 1991) and seeks dismissal of the entire Petition for this reason. While all of the sections of Ex. 1003 are dated many years prior to the critical date of the subject patent, the Board need not address the differences in these dates. As the Patent Owner readily admits, the Petition relies on only one section of Ex. 1003, which is dated April 19, 1991 on its cover page and which includes a Copyright notice date of April 19, 1991 on every page thereof. Ex. 1003 at pp. 104-111.

At least because the Copyright notice date is included on the relevant section of Prometheus, the record *prima facie* establishes a publication date in 1991 for the reference. *See, e.g., FLIR Systems, Inc., v. Leak Surveys, Inc.*, IPR2014-00411, Paper 9 (September 5, 2014) at 18-19 (“On the record before us, we are persuaded that the Copyright notice *prima facie* establishes a prior art date of 2002”); *See*

also, International Business Machines Corporation v. Intellectual Ventures II LLC, IPR2014-00681, Paper 11 (October 30, 2014) at 13-14 (“NetRanger includes a copyright date printed on its face... In fact, the disclosed copyright date of 1997 is several years before the priority date of the ‘084 patent... On this record, we are persuaded that Petitioner has made a threshold showing that NetRanger is a ‘printed publication’ under 35 U.S.C. §102”); *See also, Ex parte Wang*, Appeal No. 2012-009077 (Pat. Trial & App. Bd. 2014), Decision on Appeal at p. 3 (“... Appellants’ submission of the Hoopman reference with a 2006 date, along with the copyright date listed on the Hoopman reference, provide prima facie evidence of its public availability”); *See also, Ex parte Martinez*, Appeal No. 2007-3276 (Bd. Pat. App. & Interf. 2008), Decision on Appeal at p. 3, and *Ex Parte Petculescu*, Appeal No. 2008-002859 (Bd. Pat. App. & Interf. 2009), Decision on Appeal at p. 11.

Furthermore, Patent Owner has proffered no evidence contradicting the *prima facie* publication date. That is, rather than provide any evidence that the Copyright notice date is not a publication date, Patent Owner instead merely contends that Petitioner has not met its burden in establishing this date as the publication date. As set forth above, by virtue of the Copyright notice date being published on the referenced document, the Petitioner’s burden has been met.

Moreover, since this “threshold showing” is not challenged by Patent Owner, the

reference must be considered as a prior art publication under 35 U.S.C. §102. *See, e.g., Ex Parte Petculescu* at p. 11 (“We agree with the Examiner that Appellants have provided no evidence calling the revision date into question. Appellants merely speculate that this electronic document may have been altered without updating the revision date, they do not provide any evidence that Microsoft was in fact revised after the revision date (printed on Microsoft’s front page).

Accordingly, we conclude that the revision date of July 19, 2001, is the date of publication of Microsoft”); *See also, Ex Parte Wang* at p. 3 (“Appellants have not come forward with any evidence to suggest the authors of the Hoopman reference did not comply with this general practice. Accordingly, the Examiner has met the burden of establishing the Hoopman reference is prime facie available as prior art with a date of, broadly, 2006”); *See also, Ex Parte Albert*, Appeal No. 561-99 (Bd. Pat. App. & Interf. 1984), Decision on Appeal at p. 2 (“The burden is clearly upon appellants to disprove the prima facie publication date established by the examiner, and the unsworn, third-hand information presented in Paper No. 12 is clearly inadequate to meet that burden”).

B. Prometheus anticipates claims 1-3, 5, 12-14, 18, 19, 25-27, 29-31, and 34-36 of the '463 Patent under 35 U.S.C. § 102.

1. The Petition established that Prometheus discloses a “speed controller,” “memory,” and “feedback system” as recited by claim 1.

Speed Controller: Patent Owner argues that the Petition (Paper 6) does not

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