

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZHONGSHAN BROAD OCEAN MOTOR CO., LTD.
Petitioner

v.

NIDEC MOTOR CORPORATION
Patent Owner

Case IPR2014-01121
Patent 7,626,349

**PETITIONER'S REQUEST FOR REHEARING OF DECISION
DENYING THE MOTION TO SUBMIT A CORRECTED EXHIBIT
AND MAINTAIN FILING DATE PURSUANT TO 37 C.F.R. §42.71(d),
AND THE RESULTING DENIAL OF INSTITUTION OF
INTER PARTES REVIEW WITH RESPECT TO THE
ANTICIPATION GROUNDS BASED ON THE PRIOR ART
HIDEJI REFERENCE**

TABLE OF CONTENTS

I. INTRODUCTION AND STATEMENT OF RELIEF REQUESTED 1

II. LEGAL STANDARDS 2

III. BASIS FOR RELIEF REQUESTED 2

A. The Decision Vitiating Petitioner’s Rights Pursuant To 37 C.F.R. §42.64(b)..... 2

B. The Board Failed To Consider Petitioner’s Mistake Of Fact To Be A Clerical Mistake Under 37 C.F.R. §42.104(c) 10

C. Correction Under 37 C.F.R. §§42.5(b) and (c)(3)..... 13

IV. CONCLUSION 14

TABLE OF AUTHORITIES

Cases

<i>Eli Lilly & Co. v. Bd. of Regents of the Univ. of Wash.</i> , 334 F.3d 1264 (Fed. Cir. 2003).....	2
<i>Ford Motor Co. v. U.S.</i> , 157 F.3d 849 (Fed. Cir. 1998).....	11, 12, 14
<i>LKQ Corp. v. Clearlamp, LLC</i> , IPR2013-00020, Paper 17 (Decision) (PTAB Mar. 5, 2013)	4, 9
<i>Stevens v. Tamai</i> , 366 F.3d 1325 (Fed. Cir. 2004)	2
<i>Syntroleum Corp. v. Nestle Oil Oyj</i> , IPR2013-00178, Paper 21 (PTAB Jan. 16, 2013)	12
<i>Toyota Motor Corp. v. American Vehicular Sciences LLC</i> , IPR2013-00415.....	6, 7, 8

Statutes

19 U.S.C. §1520(c)(1) [repealed in 2004]	10
35 U.S.C. §102(b)	1, 2

Regulations

37 C.F.R. §42.104(c).....	1, 3, 10, 12
37 C.F.R. §§42.5(b) and (c)(3).....	13
37 C.F.R. §42.63(b)	2, 4
37 C.F.R. §42.64(b)	1, 3, 4
37 C.F.R. §42.64(b)(1).....	5
37 C.F.R. §42.71(c).....	2
37 C.F.R. §42.71(d)	2

Other Authorities

77 Fed. Reg. 48612, 48646 (Aug. 14, 2012)	6
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Pursuant to 37 C.F.R. §42.71(d), the petitioner, Zhongshan Broad Ocean Motor Co., Ltd. et al. (“Petitioner”), requests rehearing of the Decision (Paper No. 20) denying Petitioner’s Motion to Submit a Corrected Exhibit and the resulting denial of the institution of an *inter partes* review of U.S. Patent No. 7,626,349 (“the ‘349 patent”) based on proposed Ground No.1 under 35 U.S.C. §102(b).

I. INTRODUCTION AND STATEMENT OF RELIEF REQUESTED

The Decision denied Petitioner’s motion under 37 C.F.R. §42.104(c) (Paper No. 17 or “Motion”) to file an affidavit attesting to the accuracy of the originally filed English translation of JP 2003-348885 (the “Hideji Reference”). See Paper No. 20 at pp. 9-12. As a result, the Board declined to institute an *inter partes* review of claims 1-3, 8-9, 12, 16, and 19 under 35 U.S.C. §102(b) based on the Hideji Reference, but did institute an *inter partes* review of those claims under §103 based on other prior art references. See Paper No. 20 (Decision) at pp. 13 & 17. Petitioner requests that the Board reconsider its Decision denying the Motion in light of: (1) the governing regulations for making and responding to evidentiary objections, 37 C.F.R. §42.64(b); or, (2) a liberal interpretation of 37 C.F.R. §42.104(c) that would allow the correction of a mistake of fact. Alternatively, the Board should allow a belated filing of the attesting affidavit under 37 C.F.R. §42.5(b) and/or §42.5(c)(3). Upon a reconsideration and grant of the Motion by

the Board, Petitioner further requests that trial be instituted on claims 1-3, 8, 9, 12, 16, and 19 of the '349 patent under §102(b) based on the English translation of the Hideji Reference for the reasons stated in the Petition.

II. LEGAL STANDARDS

A request for rehearing “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or reply.” 37 C.F.R. §42.71(d). “When rehearing a decision on petition, the panel will review the decision for an abuse of discretion.” 37 C.F.R. §42.71(c). “An abuse of discretion occurs where the decision (1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact findings; or (4) involves a record that contains no evidence on which the Board could rationally base its decision.” *Stevens v. Tamai*, 366 F.3d 1325, 1329 (Fed. Cir. 2004) (quoting *Eli Lilly & Co. v. Bd. of Regents of the Univ. of Wash.*, 334 F.3d 1264, 1266-67 (Fed. Cir. 2003)).

III. BASIS FOR RELIEF REQUESTED

A. The Decision Vitiating Petitioner’s Rights Pursuant To 37 C.F.R. §42.64(b)

The Board recognizes that a failure to file an attesting certificate *with* the English translation as required by 37 C.F.R. §42.63(b) is not absolutely fatal, but rather is remediable. *See Broad Ocean*, IPR2014-01121 Paper No. 20 (Decision)

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