

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ZHONGSHAN BROAD OCEAN MOTOR CO., LTD.;  
BROAD OCEAN MOTOR LLC; and  
BROAD OCEAN TECHNOLOGIES, LLC

Petitioners

v.

NIDEC MOTOR CORPORATION

Patent Owner

U.S. Patent No. 7,626,349  
Case No. IPR2014-01121

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**PETITIONERS' RESPONSE TO PATENT OWNER'S MOTION FOR  
OBSERVATION REGARDING CROSS-EXAMINATION OF REPLY  
WITNESS GE HU**

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Pursuant to the Board’s January 21, 2015 Scheduling Order (Paper 21), Petitioners Zhongshan Broad Ocean Motor Co., Ltd. Broad Ocean Motor LLC, and Broad Ocean Technologies, LLC (collectively, “Broad Ocean” or “Petitioners”) provide the following Response to Patent Owner’s Motion for Observation Regarding Cross-Examination of Reply Witness Ge Hu.

As the Board stated in this action, the purpose of observations is to “draw the Board’s attention to relevant cross-examination testimony of a reply witness, since no further substantive paper is permitted after the reply.” Paper 21 at 6. Patent Owner, however, improperly uses the observations as a vehicle to supplement the arguments in its Patent Owner Response. Broad Ocean objects to this misuse of the observations. See PTAB Trial Practice Guide, 77 Fed. Reg. 48756, 48768 (“An observation (or response) is not an opportunity to raise new issues, re-argue issues, or pursue objections.”)

Further, as discussed in the individual responses below, Patent Owner’s observations either are redundant in view of Mr. Hu’s Declaration and others, or reach unwarranted inferences from the cited testimony of Ge Hu in view of other testimony of Mr. Hu herein that has either been omitted or ignored by Patent Owner.

1. Response to Observations 1 and 2 – The testimony cited by Patent Owner is redundant of testimony in Hu’s Declaration. See Ex. 1020, para. 1.

2. Response to Observations 3-4 -- Patent Owner incorrectly asserts that this testimony demonstrates that PSC motors and ECM motors operate in separate submarkets, and that ECM have advantages over the PSC motors “they replaced.” First, just because a PSC motor lacks certain features of an ECM motor does not necessarily mean that these motors do not compete. Both Mr. Hu and other witnesses have clearly and unequivocally testified that the motors compete. Significantly, Patent Owner failed to ask Hu whether these motors do, in fact, operate in separate submarkets. Instead, Patent Owner now wants the Board to infer “evidence” that it failed to elicit from the witness when it had the opportunity. Moreover, Patent Owner’s observation takes Mr. Hu’s testimony out of context by cherry picking excerpts from the transcript. For example, Mr. Hu was describing his work on a four wire motor project known as ComfortNet while he was at Goodman that would allow Goodman to compete with others selling a high efficiency system:

Q. Now, the next sentence in your declaration says, the purpose of this project was to develop a four wire communicating EC, electronically commutated, motor in order to be able to offer a product similar to what Goodman's competitors were offering at the time.

Q. Do you see that?

A. Yes.

Q. And then you say, the project was known as ComfortNet. Was your total involvement with ComfortNet related to the development of the controller boards for the product?

A. My involvement was not limited to the control boards, but also the qualification of an EC motor for those control boards and -- yes, that's -- yes, that's what I meant, more than the control boards.

Q. And when you say qualification for EC motor, what do you mean?

A. I had to run a series of tests in order to make sure the new motor met the specifications. And once it did, it was qualified to be used in production.

Ex. 2030, page 14, line 3-page 15, line 23.

Then Mr. Hu explained that Goodman had considered using a PSC motor in this system but then decided to use an ECM motor.

Q. And the ComfortNet project was intended to be used only with an electronically commutated motor, correct?

A. When a project was first put together considered PSC motor as an option, though we didn't go to production with it for indoor motors.

Ex. 2030, page 16, line 23-page 17, line 3.

Finally, Patent Owner is improperly attempting to use this observation as a vehicle to supplement arguments it could have raised in its Patent Owner Response. Broad Ocean objects to this misuse of the observation. See PTAB Trial

Practice Guide, 77 Fed. Reg. 48756, 48768. Specifically, Nidec could have argued that there exists this submarket for these motors and could have supported that position supposedly with evidence in its Response. Patent Owner failed to do so, and it is too late to do so by way of Patent Owner's Motion for Observation. Thus, Patent Owner should not now be allowed to shore-up its Response with points it could have raised then. Id. at 48768 ("An observation (or response) is not an opportunity to raise new issues, re-argue issues, or pursue objections.").

3. Response to Observation 5 -- Patent Owner claims that this testimony demonstrates that PSC motors and ECM motors operate in separate submarkets, and that it is contrary to previous Hu testimony. Broad Ocean has explained the fallacy and impropriety of Patent Owner's "submarket" observation with respect to Responses to Observations 3-4.

With respect to any alleged inconsistency in Mr. Hu's testimony, Patent Owner fails to point out that in Exhibits 2034 and 2035 (Goodman internal documents related to the blower motor projects) the use of a PSC motor was, in fact, considered at some point in time. See Ex. 1020, paras. 4-6.

4. Response to Observation 6 -- Broad Ocean does not dispute this Observation. However, in testimony right after the quoted testimony in the Observation, Hu did describe how he obtained information as to how Goodman chose the Nidec motor:

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