

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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VOLKSWAGEN GROUP OF AMERICA, INC.

Petitioner

Patent No. 5,954,781

Issue Date: Sep. 21, 1999

Title: METHOD AND APPARATUS FOR OPTIMIZING VEHICLE  
OPERATION

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**PETITIONER'S REQUEST FOR REHEARING UNDER  
37 C.F.R. §§ 42.71(c) and (d)**

Case No. IPR2015-00276

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## **I. INTRODUCTION AND STATEMENT OF RELIEF REQUESTED**

Under 37 C.F.R. §§ 42.71(c) and (d), Petitioner Volkswagen Group of America, Inc. (“VWGoA”) requests a rehearing of the Patent Trial and Appeal Board’s (“Board”) June 1, 2015 Decision not to institute an *inter partes* review of U.S. Patent No. 5,954,781 (the “781 patent”) based on its November 21, 2014 Petition.

Petitioner submits that the Board misapprehended or overlooked VWGoA’s arguments related to: (1) the scope of the term “fuel injection notification circuit;” (2) the scope of the claimed “processor subsystem;” and (3) the obviousness rationale for combining Smith with the remaining prior art in the Petition.

## **II. LEGAL STANDARDS**

In reviewing a request for rehearing, the panel will review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). The burden of showing that a decision should be modified lies with the party challenging the decision. 37 C.F.R. § 42.71(d). An abuse of discretion “occurs when a court misunderstands or misapplies the relevant law.” *Renda Marine, Inc. v. U.S.*, 509 F.3d 1372, 1379 (Fed. Cir. 2007). The request for rehearing must “specifically identify all matters a party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” 37 C.F.R. § 42.71(d).

### III. BASIS FOR RELIEF REQUESTED

The Board, in declining to institute *inter partes* review of the '781 patent, stated that Petitioner proposed a construction for the claim term “fuel overinjection notification circuit” as a circuit that “provides the driver with . . . an alert that his or her driving is fuel inefficient.” Decision, Paper No. 8, at 6–7. Additionally, according to the Board, the Patent Owner proposed that the term means “a circuit that provides a driver with a notification that his or her driving is fuel efficient or inefficient.” *Id.* at 7. The Board, after citing passages from the specification of the '781 patent describing the fuel overinjection notification circuit, stated that it “cannot discern how the construction proffered by the Petitioner or Patent Owner add any clarity to the term, the meaning of which is discernable from the context of the claims and the specification.”<sup>1</sup> *Id.* The Board concluded that no construction

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<sup>1</sup> The Board’s Decision cited Ex. 1001, 2:15–19 (“a fuel overinjection notification circuit for issuing notifications that excessive fuel is being supplied to the engine of the vehicle”), 3:10–15 (“The apparatus further includes a fuel overinjection notification circuit, an upshift notification circuit and a downshift notification circuit, all of which are coupled to the processor subsystem. The fuel overinjection notification circuit issues notifications that excessive fuel is being supplied to the engine of the vehicle.”), 4:15–18 (“In other aspects thereof, the

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