

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Issue Date: December 1, 2009

Title: LOW NOISE HEATING, VENTILATING AND/OR
AIR CONDITIONING (HVAC) SYSTEMS

**PETITIONER'S REPLY IN SUPPORT OF ITS
MOTION FOR JOINDER TO RELATED
INSTITUTED *INTER PARTES* REVIEW
(37 C.F.R. §42.122(b))**

Case No. IPR2015-00762

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Petitioner is not seeking a “second bite at the apple” by introducing a previously uninvolved prior art reference. Rather, the Hideji Japanese Patent Publication JP2003-34885 (“Hideji”) was excluded from consideration in IPR2014-01121 solely due to an omitted attesting affidavit. The English translation of Hideji filed in this proceeding as Ex. 1005, along with an attesting affidavit, is the very same English translation filed in IPR2014-01121. Nidec has not challenged the correctness of the English translation. No credible prejudice to Patent Owner is even remotely apparent. See *Volkswagen v. EmeraChem*, IPR2014-01555, Paper 20 (Decision) at p. 6. Indeed, in the subject proceeding, the Patent Owner was able to file a Preliminary Response, which substantively addressed Hideji, on an expedited basis.

I. THE BOARD HAS THE DISCRETION TO JOIN THE SAME PARTY UNDER 35 U.S.C. §315(c)

As it must, Patent Owner Nidec recognizes that the Board has previously joined a second filed IPR petition to a previous IPR proceeding where the petitioner seeking joinder was already a petitioner in the instituted proceeding. See Patent Owner’s Preliminary Response at pp. 11-13 (discussing *Target*, IPR2014-00508 (decision by expanded PTAB panel) ; *Samsung*, IPR2014-00557, Paper 10 at p. 16; *Microsoft*, IPR2013-00109, Paper 15; *ABB*, IPR2013-00286, Paper 14; *Sony*, IPR2013-00327, Paper 15; *Ariosa*, IPR2012-00022, Paper 166 at

pp. 18-22). Nevertheless, Patent Owner Nidec now argues the Board is statutorily precluded by 35 U.S.C. §315(c) from *ever* joining the same party. See Preliminary Response at pp. 4-10.

Patent Owner Nidec's argument to withdraw the discretion previously exercised by the Board tracks the arguments made in the *Target* dissent. The *Target* dissent explained that the divergence in the interpretation of §315(c) by the majority and dissent stems from fundamentally different approaches to construing that statute:

The majority reads §315(c) as if it grants discretion for the Board to act in any way not expressly prohibited by the statute. By contrast, [the dissent] interpret[s] §315(c) to grant discretion for the Board to act only in ways that are stated expressly in the statutes.

Target v. Destination Maternity, IPR2014-00508, Paper 28, dissent at p. 2 (PTAB Feb. 12, 2015). However, under the *Target* dissent's approach to statutory construction, the Board would never be able to exercise any discretion under any circumstances, because the Board would be restricted to doing only that which the statute already expressly says it can do.

Petitioner Broad Ocean submits that its present motion for joinder complies with 35 U.S.C. §315(c) for the reasons stated in the majority opinion in *Target* and in *Ariosa*, IPR2012-00022, Paper 166 at pp. 18-22. There is no dispute that

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