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 MOTION FOR REHEARING PURSUANT TO 37 C.F.R. §42.71(d)

Case No. IPR2015-00762

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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 12) denying Petitioner's Motion for Joinder 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 the sole ground raised in the Second Petition.

I. INTRODUCTION AND STATEMENT OF RELIEF REQUESTED

In the copending *Zhongshan Broad Ocean v. Nidec Motor*, IPR2014-01121, on January 21, 2015, the Board declined to institute an *inter partes* review of claims 1-3, 8-9, 12, 16 and 19 of the '349 patent under 35 U.S.C. §102(b) based on Hideji Japanese Patent Publication JP 2003-348885 ("Hideji") due to a lack of an affidavit attesting to the accuracy of the filed English translation thereof, but did institute an *inter partes* review of those same claims under §103 based on Bessler and Kocybik. See IPR2014-01121, Paper 20 (Decision) at pp. 13 & 17. Within one month of that Decision, on February 20, 2015, Petitioner timely filed the subject Second Petition for *inter partes* review (IPR2015-00762) and an accompanying motion for joinder with IPR2014-01121. See 35 U.S.C. §315(c); 37 C.F.R. §42.122(b). The Board concluded that there is a reasonable likelihood that claims 1-3, 8, 9, 12, 16 and 19 are anticipated by Hideji. See Decision (Paper 12) at p. 11. Nevertheless, the Board denied Petitioner's motion for joinder because the Board narrowly interpreted the phrase "join as a party" in 35 U.S.C.

§315(c) to exclude a person who is already a party in the previously instituted IPR. See Decision (Paper 12) at pp. 12-13. Consequently, the Second Petition was denied and no *inter partes* review was instituted. See Decision (Paper 12) at p. 15.

On June 25, 2015, after Petitioner filed its Reply in support of its motion for joinder (Paper 11) but before the Board's July 20, 2015 Decision (Paper 12), the Director of the United States Patent and Trademark Office ("Patent Office") filed an Intervenor's Brief with the Federal Circuit in *Yissum Research Dev. Corp. v. Sony Corp.*, Appeal No. 2015-1342, which is attached hereto as Attachment A. In its Intervenor Brief, the Patent Office told the Federal Circuit that "the Board has consistently held [that] it …. has the discretion to join IPR proceedings, even if §315(b) would otherwise bar the later-filed petition, and ***even if the petitions are filed by the same party***." Attachment A at p. 18 (emphasis added). More importantly, the Patent Office further told the Federal Circuit that by the *Target* Decision Granting Petitioner's Request for Rehearing (by expanded panel), "[t]he USPTO thus has acted to ensure that its pronouncements remain consistent on this issue, which is the antithesis of Yissum's suggestion that the USPTO 'can't make up its mind about the proper interpretation' of §315(c)." Attachment A at p. 20 (quoting Appellant's Br. at 33 (citing *Skyhawke*)). Lastly, in a footnote, the Patent Office distinguished the *SkyHawke* Decision which was also cited by the Board in the subject Decision (paper 12 at p. 12):

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