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

Case No. IPR2015-00762

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Petitioner has received approval to file this Reply in support of its motion for rehearing of the Decision (Paper 12) denying Petitioner's Motion for Joinder

I. ON BALANCE, CONSIDERATIONS OF EFFICIENCY, FAIRNESS, EQUITY AND PUBLIC POLICY SUPPORT JOINDER

Public policy considerations and the public interest favors seeing invalid patents formally invalidated. See, e.g., 37 C.F.R. §1.56(a) ("A patent by its very nature is affected with a public interest. The public is best served … when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability."). All three judges of the Board panel agreed that Petitioner has established a reasonable likelihood of prevailing on its challenge of claims 1-3, 8, 9, 12, 16 and 19 as anticipated by Hideji under 35 U.S.C. §102(b). See Decision (Paper 12) at pp. 7-11 and p. 3 *(dissent)*.

Patent Owner's allegation of prejudice seems to be predicated on its belief that the case for invalidating the challenged claims under §102(b) based on Hideji is *stronger* than that under §103 based on the Bessler and Kocybik references. That is, while Patent Owner found it unnecessary to move to amend the challenged claims in face of Ground 2 in IPR2014-01121, Patent Owner now contemplates the need to amend the challenged claims if joinder is granted. See Opposition (Paper 14) at p. 1 ("Nidec may then have to amend and much of the work to date may become moot."). The relative strength of the ground of invalidity under

§102(b) based on Hideji supports joinder in view of the public interest in formally invalidating those patent claims that are, in fact, invalid.

Furthermore, there is no accusation that Petitioner has been dilatory. To the contrary, Petitioner sought to expedite IPR2015-00762 from the very beginning. See Order (Paper 9) (granting Petitioner's request for acceleration of the Patent Owner's deadline for filing a Preliminary Response). Patent Owner was able to file its Preliminary Response, which substantively addressed Hideji, within the shortened, expedited time period. See Preliminary Response (Paper 10) at pp. 20-25. As Patent Owner alludes to, the bulk of the discovery in IPR2014-01121 was directed to the issue of secondary considerations (see Opposition (Paper 14) at p. 1), which would be absent for the ground under §102(b) based on Hideji. Patent Owner does not dispute that an IPR trial on the ground under §102(b) based on Hideji can be completed during a shortened, expedited time period. Cf. Opposition (Paper 14) at pp. 1-2.

Turning to the oral argument in IPR2014-01121 scheduled for October 16, 2015, an extension of this schedule is permitted by law and is not a reason for denying joinder. See 35 U.S.C. §316(a)(11) ("may adjust the time periods in this paragraph in the case of joinder under section 315"); 37 C.F.R. §42.100(c) ("The time can be extended by up to six months for good cause by the Chief Administrative Patent Judge, or adjusted by the Board in the case of joinder.").

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