

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NISSAN NORTH AMERICA, INC.,  
Petitioner

v.

JOAO CONTROL & MONITORING SYSTEMS, LLC  
Patent Owner

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Case IPR2015-01508  
Patent No. 6,542,076

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**PETITIONER NISSAN NORTH AMERICA, INC.'S  
REPLY TO PATENT OWNER'S RESPONSE TO PETITION**

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## LIST OF EXHIBITS

Exhibit 1022	Opinion and Order of Mark A. Goldsmith, No. 13-cv-13957, (E.D. Mich. 2016) (1) Granting in Part and Denying in Part Defendant FCA US LLC'S Motion for Summary Judgment on Invalidity and Noninfringement (Dkt. 59) and (2) Denying as Moot Plaintiff JOAO Control & Monitoring Systems, LLC'S Motion for Summary Judgment of Infringement of U.S. Patent No. 7,397,363 by Uconnect Access (Dkt. 57), signed on June 10, 2016.
Exhibit 1023	October 26, 2001 Preliminary Amendment for Patent Application No. 09/551,365.

## I. INTRODUCTION

Petitioner Nissan North America, Inc. (“Petitioner”) submits this Reply to Patent Owner’s Response (the “*Response*,” Paper 21) to the Petition (the “*Petition*,” Paper 1) for Inter Partes Review (“*IPR*”) of U.S. Patent No. 6,542,076 (the “’076 Patent,” Exhibit 1001).

Patent Owner’s attempt to construe additional claim terms is not needed. Patent Owner’s arguments are without merit and consist entirely of attorney argument with no expert testimony offered in support. All grounds presented in the *Petition* and instituted by the Board demonstrate that the challenged claims are unpatentable and should be canceled.

## II. CLAIM CONSTRUCTION

For the purpose of this IPR proceeding, Petitioner does not contest the Board’s claim construction.<sup>1</sup> (*Paper 10*, pp. 5-11).

Patent Owner requests to adopt the claim construction of the U.S. District Court for the Eastern District of Michigan for additional claim terms: the first, second, and third “signals” recited in the independent claims. (*Paper 21*, pp. 11-12). Petitioner recognizes that the District Court invalidated all of the asserted

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<sup>1</sup> Petitioner reserves all rights to propose constructions for additional terms in litigation or other proceedings.

claims and found that Frossard discloses the three control device system recited in independent claims 3 and 205. (Exhibit 1022, pp. 14-23, 28-29, 31-32, and 35). Petitioner maintains that these terms should be given their plain and ordinary meaning. (*Paper 1*, p. 9). Nonetheless, as discussed below, each ground of rejection is properly maintained even under Patent Owner's proposed constructions.

### III. **RESPONSE TO ARGUMENTS**

As a preliminary matter, it is noteworthy that Patent Owner does not provide any expert testimony in support of its positions. Instead, it relies entirely on bare attorney argument.

#### A. **Full weight should be given to the *Declaration*.**

Patent Owner's request to give Mr. McNamara's declaration little or no weight is baseless for at least the following three reasons. (*Paper 21*, pp. 12-15).

##### (1) Petitioner's Expert reviewed all required materials.

At paragraph 14 of his *Declaration*, Mr. McNamara states that "I have read the '076 Patent and its prosecution history." (*Exhibit 1003*, p. 6, ¶14). Nearly nine months after Mr. McNamara signed his *Declaration*, he was cross-examined for two days. In response to "You have testified previously, I think, that you did not review the prosecution histories for the four JCMS patents at issue, correct?" he answered "That's correct." (*Exhibit 2005*, p. 153, lines 11-15).

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