

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Kia Motors America, Inc.
Petitioner,

v.

Signal IP, Inc.
Patent Owner.

Patent No. 6,012,007

Issued: January 4, 2000

Filed: June 3, 1997

Inventors: Duane Donald Fortune, Robert John Cashler

Title: OCCUPANT DETECTION METHOD AND APPARATUS FOR AIR BAG
SYSTEMS

Inter Partes Review No. IPR2016-00115

**REPLY TO PATENT OWNER'S OPPOSITION TO MOTION FOR
JOINDER**

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I. INTRODUCTION

The Board routinely grants motions for joinder where the party seeking joinder introduces identical arguments and the same grounds in the existing proceeding. *See, e.g., Perfect World Entm't, Inc. v. Uniloc USA, Inc., et al.*, IPR2015-01026, Paper 10, (PTAB Aug. 3, 2015); *Fujitsu Semiconductor Limited v. Zond, LLC*, IPR2014-00845, Paper 14 (PTAB Oct. 2, 2014); *Enzymotec Ltd. v. Neptune Technologies & Bioresources, Inc.*, IPR2014-00556, Paper 19 (PTAB Jul. 9, 2014). This is the exact situation here, and KMA's motion for joinder should be granted consistent with the Board's "policy preference for joining a party that does not present new issues that might complicate or delay an existing proceeding." *Enzymotec*, IPR2014-00556, Paper 19, at 5; *see also* 157 Cong. Rec. S1376 (daily ed. Mar. 8, 2011) (statement of Sen. Kyl) ("The Office anticipates that joinder will be allowed as of right – if an *inter partes* review is instituted on the basis of a petition, for example, a party that files an **identical petition** will be joined to that proceeding . . .") (emphasis added).

Joinder is also routinely granted when the petitioner files a petition and motion for joinder within 30 days of the institution of trial in the existing proceeding. *Nintendo of Am., Inc., et al. v. Babbage Holdings, LLC*, IPR2015-00568, Paper 12 (PTAB Mar. 18, 2015)). Because KMA timely filed its petition and motion for joinder within one month of the October 1, 2015 institution of

Honda's IPR and there is nothing unusual about KMA's request for joinder, KMA's motion for joinder should be granted.

Patent Owner's argument that the proceedings in the Honda IPR have reached or soon will reach its substantive stages is not persuasive. KMA's identical petition and motion for joinder were filed before the close of discovery and Patent Owner's response is not due until January 4, 2016. *See* Honda IPR, Scheduling Order, Paper 12; *see also Perfect World*, IPR2015-01026, Paper 10 at 6 (granting joinder despite patent owner's argument that the existing IPR has reached its substantive stages). Indeed, KMA did not participate in the December 1, 2015 deposition of expert, Dr. Carr, and has no intention to revisit the already conducted deposition of Dr. Carr. Rather, KMA simply seeks to join the ongoing Honda IPR, adopting its "understudy" role upon the grant of joinder.

Patent Owner further argues that by joining KMA, termination of the proceeding would not be possible. This argument is also unpersuasive and premature because there has been no indication of Honda and Patent Owner reaching a settlement agreement and a Motion to Terminate has not been filed. *See Nintendo*, IPR2015-00568, Paper 12 at 4-5 (granting joinder despite patent owner's concerns of settlement because at the time Nintendo filed its petition and motion for joinder, no Motion to Terminate had been filed in the existing IPR proceeding).

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