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IPR2016-00123, Paper No. 21
IPR2016-00146, Paper No. 21
IPR2016-00177, Paper No. 21
February 21, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VOLKSWAGEN GROUP OF AMERICA, INC.,
Petitioner,

v.

WEST VIEW RESEARCH, LLC,
Patent Owner.

Case IPR2016-00123 (Patent 8,719,037 B2)
Case IPR2016-00146 (Patent 8,719,038 B1)
Case IPR2016-00177 (Patent 8,781,839 B1)

Held: February 7, 2017

Before MICHAEL R. ZECHER, KEVIN W. CHERRY, and
JASON J. CHUNG, *Administrative Patent Judges*.

The above-entitled matter came on for hearing on Tuesday,
February 7, 2017, commencing at 1:01 p.m., at the U.S. Patent
and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

Case IPR2016-00123 (Patent 8,719,037 B2)
Case IPR2016-00146 (Patent 8,719,038 B1)
Case IPR2016-00177 (Patent 8,781,839 B1)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

CLIFFORD A. ULRICH, ESQUIRE
Andrews, Kurth, Kenyon, LLP
One Broadway
New York, New York 10004-1007

and

CHARLES HAWKINS, ESQUIRE
Volkswagen Group of America, Inc.

ON BEHALF OF PATENT OWNER:

(No counsel present.)

Case IPR2016-00123 (Patent 8,719,037 B2)
Case IPR2016-00146 (Patent 8,719,038 B1)
Case IPR2016-00177 (Patent 8,781,839 B1)

P R O C E E D I N G S

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JUDGE ZECHER: We are on the record. This is an oral argument for Cases IPR2016-00123, 00146 and 00177. Today we have a unique oral argument. We just have the petitioner here with us.

I wanted to get a few things on the record given that we did have a call yesterday and kind of briefly discussed this, but one of the concerns that the panel had was a potential appearance of an improper *ex parte* communication. I believe we pointed the attorneys of both petitioner and patent owner to the trial practice guide, which clearly indicates that the prohibition against *ex parte* communications does not come into play in this context where one party, the patent owner, chooses not to participate in the hearing. We did receive an e-mail from the patent owner last night, as we instructed them to send to us, that indicated they were waiving their right to participate in this hearing.

So now that that's made of record, based on our oral argument order that we revised, petitioner is going to have 45 minutes to discuss these three cases. I'm just going to start the timer at 45 minutes. You can handle them how you see fit and we'll go from there. So petitioner, when you come up, can you please introduce yourself for the record.

MR. ULRICH: Cliff Ulrich from Andrews Kurth Kenyon for petitioner, Volkswagen Group of America, Inc. I

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1 have copies of our demonstratives that we filed, if I can give you
2 copies if you would like.

3 JUDGE ZECHER: Absolutely.

4 MR. ULRICH: May I?

5 JUDGE ZECHER: Please approach.

6 MR. ULRICH: So the way I would like to proceed is
7 first on IPR2016-00123 which is patent number 8,719,037, then
8 move on to IPR2016-00177 which is patent number 8,781,839,
9 then finally IPR2016-00146 which is U.S. patent number
10 8,719,038.

11 So all three patents belong to the same patent family
12 and claim priority back to June of 1999. The specifications are
13 basically the same. There are some differences in some recent
14 abstracts, some typographical corrections, but by and large they
15 are the same. And all three more or less relate to transportation
16 devices that include functionalities such as network
17 communication, voice recognition and also some display features
18 as well.

19 As described in all of these patents, the hardware
20 features are conventional, the software features are conventional
21 and all the functionality is basically conventional.

22 So our IPRs, petitions, we included a declaration by our
23 expert, Scott Andrews, who is a EE, BS and MS, 35 years
24 experience in automotive technology. The petitions, of course,
25 describe scope and content of the prior art, explain why all of the

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1 challenged claims are obvious. And Mr. Andrews also describes
2 the scope and content of that prior art, also explains why the
3 claims are obvious in light of that prior art.

4 Now, in the institution decision the Board sided with
5 Volkswagen Group of America on basically all of the issues
6 except for one claim construction issue. And that's the
7 construction of display device means, the '037 patent. We, in our
8 petition, said that this was a means-plus-function claim. The
9 Board disagreed. But at the end of the day, it's not really an issue
10 that matters.

11 The only claim construction issue were the
12 means-plus-function elements of claim 77 of the '037 patent, and
13 we laid out our structural analysis of those elements in the
14 petitions. For all of the other claim terms, our petition took the
15 position that broadest reasonable interpretation, of course,
16 applies.

17 In response to the institution decisions, West View filed
18 patent owner responses that only contained attorney argument.
19 There was no expert testimony. They didn't depose our witness.
20 So Mr. Andrews' testimony remains unrebutted.

21 The patent owner responses more or less repeat the
22 arguments that West View made, that the patent owner made in
23 its preliminary response, as the Board found all of those
24 arguments to be unpersuasive. And West View's patent owner
25 responses contain no argument that would compel a different

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