

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**TOYOTA MOTOR CORPORATION,
Petitioner,**

v.

**BLITZSAFE TEXAS, LLC,
Patent Owner**

**Case IPR2016-00421
Patent 7,489,786**

**PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE TO
PETITION**

Petitioner Toyota Motor Corporation submits this Reply to Patent Owner's Response to Petitioner and requests that the Board issue a Final Written Decision finding claims 44 and 47 unpatentable.

In the Institution Decision, the Board instituted trial as to claims 44 and 47 of the '786 Patent on the obviousness ground based on the combination of JP '954 in view of Lau and Bhogal. Institution Decision (Paper No. 13) at 35-43. In its Response, Patent Owner challenges the Board's Institution Decision *solely* on the basis that the Board allegedly failed to consider whether "portable" devices are "external." Response (Paper No. 20) at 1. However, "external" appears nowhere in claims 44 and 47, as the claims merely require that a "portable device" is integrated with the car stereo. While Patent Owner does not challenge the Board's construction of "portable," it nevertheless proceeds to attack the references individually by arguing that they fail to disclose an "external" device. Because Patent Owner's argument is based on an improper interpretation of the claim language, and fails to account for the collective teaching of the prior art and the understanding of one of skill in the art, it should be rejected.

The Board did not construe "external" in its Institution Decision, or indicate that any other meaning should apply. Decision at 10-17 (construing only "portable," "interface," and "device presence signal" terms). In the Institution Decision, the Board credited the showing of Petitioner and Dr. Matheson in

explaining how the combination of the prior art rendered the limitations of claims 44 and 47 obvious, including the aspect of an apparatus for docking a portable device (such as an MP3 player) for use with a car stereo. Petition at 37-42; Ex. 1115 at ¶¶ 118-125. This showing included how the combination of JP '954 and Lau provided a system allowing interfacing an MP3 player with a car stereo (by emulating a CD changer) and that Bhogal also provided the teaching of a docking station for use with a portable MP3 player. Petition at 3-40; Ex. 1115 at ¶ 123.

In its Institution Decision, the Board likewise found that the combined system of JP '954 and Lau resulted in a “portable MP3 player [] substituted in for [Lau’s] CD Changer” and that “Bhogal describes its emulator unit as a portable device.” Institution Decision at 39. Further, the Board found:

Thus, the portable MP3 player in JP '954 would benefit from the convenience and ease of use provided by being removably placed in a docking station the same way Bhogal’s emulator 206 would benefit from the convenience and ease of use provided by being removably placed in a docking station.

Id.

With respect to the “portable aspect of an MP3 player,” the Board correctly credited the testimony of Petitioner’s expert Dr. Matheson, who explained that “portable MP3 Players were commonly available in the market.” *Id.* at 39-40 (citing Ex. 1115 at ¶ 86).

Patent Owner argues that “CD-changers [of JP’954] are not ‘external’ or ‘portable’ devices within the scope of the claims.” This misses the point. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981) (“One cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references.”) (citation omitted). Rather, it is the teaching of Lau that provides the “portable MP3 player,” and it is the further teaching of Bhogal that provides a docking station for the portable MP3 player. Decision at 39. Patent Owner fails to explain how a “portable MP3 player,” as taught by the combination of JP ‘954, Lau, and Bhogal, and as confirmed by the testimony of one skilled in the art, would not satisfy the “portable” limitation of claim 44, or how the portable MP3 player taught by the combination would not be an “external” device (even assuming such a limitation is required).

Patent also repeats arguments it offered in its Preliminary Response, which are equally unavailing here. Patent Owner argues that “[t]he disclosure of JP ‘954 is sparse and does not disclose any algorithms for converting control commands from a car stereo to a format compatible with an MP3 player or other ‘alien’ devices, as required by the claims (*i.e.*, ‘external’ devices).” Response at 2. However, the Board previously rejected Patent Owner’s criticism of JP ‘954 as being limited to CD-changer technology, noting that “on this record, the evidence does not establish that technology relating to control of CD changers is very much

different from that relating to control of portable MP3 digital audio devices.”

Decision at 42. The Board then invited Patent Owner to “explore such issues by submitting evidence in that regard.” *Id.* Patent Owner declined the Board’s invitation, instead relying again on unsupported attorney arguments previously found unpersuasive. Accordingly, these arguments should be given no weight.

See Euro-Pro Operating, LLC, v. Acorne Enterprises, LLC, IPR2014-00351, 2015 WL 4240982, at *9 (PTAB July 9, 2015) (“It is well settled by the Federal Circuit that argument of counsel cannot take the place of evidence lacking in the record.”) (citing *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984)).

As to dependent claim 47, Patent Owner presents no separate argument for patentability of this claim. Petitioner submits that it should thus be held unpatentable for the same reasons as claim 44.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Board issue a Final Decision finding claims 44 and 47 unpatentable.

Respectfully submitted,

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