UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GENERAL PLASTIC INDUSTRIAL CO., LTD.

Petitioner

v.

CANON KABUSHIKI KAISHA

Patent Owner

U.S. Patent No. 8,909,094
Issue Date: December 9, 2014
Title: SEALING MEMBER, TONER ACCOMMODATING CONTAINER AND IMAGING FORMING APPARATUS

PETITIONER'S REQUEST FOR REHEARING PURSUANT TO 37 C.F.R. §42.71(d), AND FOR AN EXPANDED PANEL

Case No. IPR2016-01361

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I. INTRODUCTION

Pursuant to 37 C.F.R. §42.71(d), Petitioner General Plastic Industrial Co. ("Petitioner") requests rehearing of the Decision (Paper 12) denying its Fourth Petition (IPR2016-01361, filed July 8, 2016) under 35 U.S.C. §314(a) and 37 C.F.R. §42.108(a), without assessing the substantive merits of the sole ground of unpatentability presented in the Fourth Petition. Petitioner filed a first petition (IPR2015-01954, filed Sept. 25, 2015) asserting two grounds based on Matsuoka and the Fourth Petition asserting one ground based on Yasuda, which was not actually known to Petitioner until after the denial of the first petition. Neither the Board nor Patent Owner Canon contends that the Fourth Petition relies upon "the same or substantially the same prior art or arguments" as previously presented in the first petition, within the meaning of 35 U.S.C. §325(d). The rationale used by the Board under §314(a) to deny the subject Fourth Petition would effectively bar the filing of a subsequent petition after the denial of a first petition in every other *inter partes* proceeding going forward, which directly conflicts with §325(d) and Board decisions instituting *inter partes* reviews on just such a second petition.

The statutory framework and rules implementing *inter partes* reviews contemplate that a petitioner may file more than one petition during the statutory period and the discretion implicit in §314(a) should not amount to a *de facto* bar against all subsequent petitions filed after the denial of the first petition.

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