

Appeal Nos. 2017-1870, -1871

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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**POLARIS INDUSTRIES INC.,**

*Appellant,*

v.

**ARCTIC CAT, INC.,**

*Appellee,*

**ANDREI IANCU**, Under Secretary of Commerce for Intellectual Property and Director  
of the United States Patent and Trademark Office,

*Intervenor.*

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Appeals from the United States Patent and Trademark Office,  
Patent Trial and Appeal Board in Nos. IPR2015-01781, IPR2015-01783.

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**RESPONSE FOR INTERVENOR—DIRECTOR OF THE  
UNITED STATES PATENT AND TRADEMARK OFFICE**

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## I. INTRODUCTION AND PROCEDURAL HISTORY

Arctic Cat, Inc. petitioned the USPTO to undertake two inter partes reviews—(IPR2015-01781) and (IPR2015-01783)—of certain claims of Polaris Industries, Inc.’s U.S. Patent No. 8,827,028 on various obviousness grounds. The patent relates to the positioning of automotive components (such as four-wheel drive, rear-engine placement, and a drive shaft located between the seats) in side-by-side all-terrain vehicles (“ATVs”). In addition to involving the same patent, both inter partes reviews involved primarily the same art, and substantially overlapping obviousness arguments on the merits. In its preliminary responses in both reviews, Polaris argued against institution of the challenged claims in Arctic Cat’s petition; it did not take a position for or against the possibility of partial institution.

In its institution decisions, the Board found that a subset of the claims in each review met the threshold for institution. In IPR2015-01781, the Board instituted review on claims 88, 90-101, but declined to institute review on claims 24-36, 38, 41-42, 45-46, and 89. Polaris’s Mot., Ex. A at 32-33. In IPR2015-01783, the Board instituted review on claims 60-62, 64-69, 74-75, 78-86, but declined to institute review on challenged claim 63. Polaris’s Mot., Ex. B, at 20-21. Subsequently though, in response to Polaris’s motion for rehearing, in which Polaris argued that the Board should have denied institution on claims 64, 74, and 75 for the same reasons that it had denied institution on claim 63, the Board modified the institution decision to remove claims 64, 74, and 75 from the trial. Polaris’s Mot., Ex. C at 3-4, Ex. D at 2-3.

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