

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUBARU OF AMERICA, INC., MAZDA MOTOR OF AMERICA, INC.,
VOLVO CARS OF NORTH AMERICA, LLC,
MITSUBISHI ELECTRIC CORPORATION,
MITSUBISHI MOTORS CORPORATION, DAIMLER AG, and
BMW OF NORTH AMERICA, LLC.,
Petitioner,

v.

BLITZSAFE TEXAS, LLC,
Patent Owner.

Case IPR2018-00090
Patent 8,155,342 B2

Before JAMESON LEE, THOMAS L. GIANNETTI, and MIRIAM L. QUINN,
Administrative Patent Judges.

QUINN, *Administrative Patent Judge.*

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5(a)

Petitioner, as captioned, requested authorization to file a motion to expedite the current proceeding to proceed immediately to institution of trial and then immediately thereafter to render a final written decision in light of a previous *inter partes* review, IPR2016-00418 (“Toyota IPR”), which was terminated on March 10, 2017, after all parties settled and after oral argument. Judges Jameson Lee, Thomas Giannetti, and Miriam Quinn presided over the conference call with Petitioner and Patent Owner’s lead counsel to hear the parties’ positions concerning Petitioner’s request. After hearing the arguments from both parties, we denied Petitioner’s request.

The denial of Petitioner’s request is based on three reasons. First, Petitioner’s request would have dispensed with Patent Owner’s option of filing a Preliminary Response under 35 U.S.C. § 313. Petitioner’s motion seeks to expedite the current proceeding by urging the Board to institute trial based only on the filed Petition, without Patent Owner’s input, and to proceed immediately to render a final written decision based on the record developed in the Toyota IPR. Petitioner represents that its Petition is substantively identical to the petition filed in the Toyota IPR, a position with which we do not agree since Petitioner here adopts a different claim interpretation position. But even if the petitions were substantively identical, that fact is insufficient reason to deprive Patent Owner of a statutory right to respond. Indeed, the asserted similarity of the petitions is irrelevant. Patent Owner indicated that it would file a Preliminary Response here, and would consider whether to file supporting testimonial evidence therewith, a filing that was not available under the Board rules in force at the relevant time during the Toyota IPR. Because Patent Owner does not agree to forgo the option of filing a Preliminary Response in this case, we are not persuaded that Petitioner’s

proposed motion to expedite would have any probability of success, and thus, we denied the request at the conclusion of the call.

Second, Petitioner's request is premature. Although Petitioner asserts that the petition here raises no new issues and that Patent Owner would not be responding to anything new, the panel is not convinced of Petitioner's assumption that institution of trial will ensue on all grounds and on all claims included in the Toyota IPR, and further on the same reasoning. The petition here will be reviewed anew, in light of claim constructions not considered when the Toyota IPR was instituted, and after consideration of any argument and evidence raised by Patent Owner in the Preliminary Response, which may differ from the information presented in the Toyota IPR.

Finally, we are not persuaded that the goal of promoting the just, speedy, and inexpensive resolution of the dispute weighs in favor of granting, at this time, authorization to file such a motion to expedite. Petitioner focuses its arguments primarily on the "speedy" and "inexpensive" resolution of the dispute by immediately acceding to the posture of the Toyota IPR of rendering the final written decision. Even assuming that there would be efficiencies that may be gained by Petitioner's proposal, we consider that fairness and due process are paramount in our exercise of authority to manage the cases efficiently. Patent Owner opposes Petitioner's request to expedite and seeks to take advantage of, or at least consider exercising, the statutory rights of filing a Preliminary Response, a Patent Owner Response, and a Motion to Amend, where the burden of persuasion has been clarified recently to rest with Petitioner. With regard to the goal of a "just" resolution, we are thus persuaded that Petitioner's motion to expedite, as proposed, would run afoul of Patent Owner's statutory rights, and considerations of fairness and due process.

We finally note, that the notion of expediting the resolution of the issues presented by Petitioner is not foreclosed entirely. Therefore, this decision denying Petitioner's request is without prejudice. If we institute trial in this case, and after Patent Owner has exercised its right to choose whether to file a Motion to Amend, and its right to choose whether to file a Patent Owner Response, Petitioner is authorized to renew its request to file a motion to expedite.

ORDER

Having heard the parties during a conference call on December 1, 2017, on the matter of Petitioner's request for authorization to file a motion to expedite this proceeding to issue a final written decision, Petitioner's request is *denied*.

IPR2018-00090
Patent 8,155,342 B2

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