

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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JAGUAR LAND ROVER NORTH AMERICA, LLC and JAGUAR LAND  
ROVER LTD.,  
Petitioner,

v.

BLITZSAFE TEXAS, LLC,  
Patent Owner.

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Case IPR2018-01203  
Patent 7,489,786 B2

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DAIMLER AG,  
Petitioner,

v.

BLITZSAFE TEXAS, LLC,  
Patent Owner.

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Case IPR2018-01211  
Case IPR2018-01214  
Patent 7,489,786 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

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## I. BACKGROUND

The panel conducted a conference call with the parties in the above-captioned proceedings to discuss the petitions filed in each proceeding. In particular, the panel noted that for the claim construction statements, each Petition cites exhibits from district court litigation papers and those cites appeared to be improper incorporation by reference under 37 C.F.R. § 42.6 (a)(3). The panel noted that each petition was close to the limit of 14,000 words and spanned more than 80 pages each. The panel also noted that numbering of claim limitations, used as a shorthand throughout the Petition, was confusing and difficult to follow, particularly because indexes of claim limitations for over 30 challenged claims were not included in the petition. Counsel for each of the parties was present and, at Patent Owner's request and expense, a court reporter transcribed the call.

After discussion with the parties regarding the perceived problems with each of the petitions, the panel issued the following,

### Instructions:

- (1) Refiling of Corrected Petitions to correct these deficiencies will be allowed, where the corrections are non-substantive and address only the issues discussed in the claim construction section of the petitions.
- (2) To the extent citations are used to incorporate arguments that are not present in the petition, those citations are to be eliminated. Citations to supporting testimony or other evidence may be used.

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- (3) Material that is re-purposed from the argument section to the claim construction section must not include any substantive edits, whether by rephrasing, summarizing, or otherwise.
- (4) In accordance with representations of counsel, further corrections involve “moving” content from one section to another section of the petition, deleting material, or editing citations to refer to the patent-at-issue instead of referring to a document filed in district court.
- (5) Petitioner must re-certify the word count with an actual word count, which does not need to include numerals. Scientific certainty is not needed, and the panel expects a reasonable and good faith effort should be sufficient.

## II. RE-FILING CONCERNS AND PROCESS

The panel authorized the filing of Corrected Petitions over Patent Owner’s objections. Patent Owner expressed the concern that the re-filing would be unfair because Petitioners filed deficient petitions at the very end of the one-year period allowable under 35 U.S.C. § 315(b). Patent Owner argued that if the Petitions at-issue do not comply with Board rules, Petitioner should not be allowed an opportunity to cure the noted deficiencies.

The panel acknowledges Patent Owner’s objections. They are overruled. The cases are in a very early stage of the preliminary phase. One of these proceedings has no notice of filing accorded, while the notices of

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filing accorded in two of these cases were recently issued. Further Patent Owner did not express any actual prejudice. Recognizing the potential of Petitioners being time-barred, the panel declined the approach of “form over substance,” especially in consideration of Petitioners counsel assertions that the citations to exhibits were not intended to incorporate by reference those exhibits and the confusion could be remedied without substantive changes to the petitions or exceeding the word count limits.

After hearing all parties and giving our instructions, as outlined above, we issued a deadline for the re-filing of Corrected Petitions: August 17. Petitioners are to exchange with Patent Owner a version of the Corrected Petitions showing “tracked changes” in redline form indicating changes from the original Petitions. Patent Owner may contact the Board if upon review of the changes Patent Owner believes an extension of time to file the Preliminary Response is necessary. Based on Patent Owner’s request during the call, no deadlines have been adjusted to account for the correction of the Petitions. The stay of all deadlines and filings that we had previously issued pending resolution of these matters, therefore, is lifted.

The panel advised the parties to exercise reasonableness in discharging our instructions and to meet and confer before contacting the Board with any dispute arising from our ruling.

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### III. ORDER

Accordingly, it is:

ORDERED that Petitioner in each captioned proceeding is authorized to file a Corrected Petition pursuant to the Instructions set forth above;

FURTHER ORDERED that the deadline to file each Corrected Petition is August 17;

FURTHER ORDERED that Patent Owner file the transcript of the call as an Exhibit in each proceeding; and

FURTHER ORDERED that each Petitioner is to provide redline versions of the filed Corrected Petition in each proceeding with Patent Owner.

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