

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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**BENTLEY MOTORS LIMITED**  
**and**  
**BENTLEY MOTORS, INC.**  
**Petitioner**

**v.**

**JAGUAR LAND ROVER LIMITED**  
**Patent Owner**

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**IPR2019-01502**  
**U.S. Patent No. RE46,828**

**PETITIONER'S REQUEST FOR REHEARING**

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### Rules

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## I. SUMMARY OF THE ARGUMENT

“A party dissatisfied with a decision may file a request for rehearing without prior authorization from the Board” and must “specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, opposition, or a reply.” 37 C.F.R. § 42.71(d). This request is timely filed within 30 days from the Board’s decision denying institution. *See* 37 C.F.R. § 42.71(d)(2). Petitioner submits that the Board has misapprehended or overlooked the following points:

1. The Board adopted Patent Owner’s attorney argument without engaging in a claim construction analysis of “*subsystem*.” DI, 7-8 (“We discern no terms in need of express interpretation”). Patent Owner’s argument, that the front, center, and rear differentials are a “single *subsystem*” (Prelim. Resp. 16-17; DI, 12-14), defines “*subsystem*” without reference to the claim language and in a manner inconsistent with the claim language and specification of the ’828 patent; and

2. The Board gave “no weight” to the expert testimony of Dr. Glenn Bower, who testified that the Porsche 959 Art teaches two differential “*subsystems*” as claimed in the ’828 patent, which treats the center and rear differentials as separate “*subsystems*,” citing Figures 5 and 6. DI, 13-14; Pet. 20-23 (citing Ex. 1004 ¶¶ 43-48). The ’828 patent *does not* treat the center, rear, and front differentials as a single “*subsystem*.” Pet. 22-23 (citing Ex. 1004 ¶ 48).

3. The Board resolved a disputed issue of fact and found that “nothing in Figures 5 or 6 states or describes each row in the tables as a separate subsystem nor does the related written description describe each row as a separate subsystem,” without requesting supplemental briefing. DI, 14 (citing Ex. 1001, 5:31-32, 9:65-10:6, Figs. 5, 6); *see Yamaha Golf Car Co. v. Club Car, LLC*, IPR2017-02141, Paper 21, 2 (PTAB June 26, 2018) (“Pursuant to our request . . . the parties each filed a supplemental claim construction brief.”).

Petitioner submits that Patent Owner’s attorney argument challenging Dr. Bower’s expert testimony (Prelim. Resp. 18-20) raised a claim construction issue based on an underlying issue of fact, which should have been “viewed in the light most favorable to the petitioner solely for purposes of deciding whether to institute an inter partes review.” 37 C.F.R. § 42.108(c); *see Yamaha Golf*, Paper 21 at 5 (rehearing request granted “[b]ecause the conflicting testimony creates a genuine issue of material fact, we should have viewed the material fact in the light most favorable to Petitioner solely for purposes of deciding whether to institute an inter partes review.”); *see also Teva Pharms. USA v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (U.S. 2015) (“The district judge, after deciding the factual dispute, will then interpret the patent claim in light of the facts as he has found them.”). Unlike the *Yamaha* case, Patent Owner did not even submit an expert declaration to support

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