

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

**REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE**

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U.S. Patent and Trademark Office  
P.O. Box 1450  
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## I. REPLY TO PATENT OWNER’S DISCRETIONARY DENIAL ARGUMENT UNDER 35 U.S.C. § 314(a)<sup>1</sup>

The co-pending EDVA patent litigation between the parties is hardly in the “advanced state” contemplated by the *NHK Spring*<sup>2</sup> and *Next Caller*<sup>3</sup> cases relied on by Patent Owner to support a request for discretionary denial under 35 U.S.C. § 314(a). Prelim. Resp. 48–51. Discovery started only recently because Petitioner had filed a motion to dismiss that District Judge Davis denied on June 26, 2019, and the parties did not serve any discovery before the September 17, 2019 status conference. Ex. 1059, 16:4, 17:23–18:5, 23:4–6. Patent Owner recently stated it may include additional patent claims, which could well extend the schedule.

If the Board institutes this *inter partes* review (“IPR”) and related IPR2019-01539, the EDVA litigation may be stayed. Judge Davis opened the status conference by asking counsel why “shouldn’t this matter be stayed pending . . . that initial [Board] decision about the petition.” *Id.* at 2:22–3:4. He ended the conference by purposefully scheduling *Markman* hearing and expert discovery dates “out past the six-month deadline for the institution decision [Feb. 25 and March 12, 2020] so that the Court could at that point, if institution takes place, make a decision about whether it wishes to move forward or not.” *Id.* at

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<sup>1</sup> The Board authorized an 8-page Reply by email on December 5, 2019.

<sup>2</sup> *NHK Spring v. Intri-Plex*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) Prec.

<sup>3</sup> *Next Caller v. TRUSTID, Inc.*, IPR2019-00961, Paper 10 (PTAB Oct. 16, 2019).

28:7–24.<sup>4</sup> Judge Davis further recognized that the district court case is in a “unique . . . procedural posture” and may be ripe for a stay if the Board institutes an IPR proceeding. *Id.* at 30:9–19. Petitioner will seriously consider requesting a stay of the EDVA court proceeding if the Board institutes *inter partes* review in IPR2019-01502 and IPR2019-01539, dependent upon what the Board decides.<sup>5</sup>

Petitioner has not delayed filing this IPR, Patent Owner’s protestations to the contrary notwithstanding. Prelim. Resp. 49. After Petitioner’s motion to dismiss for lack of subject matter eligibility under § 101 was denied, Petitioner filed its Answer to the Amended Complaint on July 10th and the Petition on August 16th, two weeks before the August 30, 2019 § 315(b) bar date. As the Board found in the precedential *NHK Spring* decision, a Petition filed shortly before the bar date is “timely, and Patent Owner does not apprise us of any tactical advantage, or opportunity for tactical advantage, that Petitioner gained by waiting to file the Petition,” precisely the situation here. *NHK Spring* at 19; *compare with Next Caller*, Paper 10 at 3, 15–16 (6-month delay between related IPR petitions). Judge

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<sup>4</sup> Pleadings may be amended until January 24, 2020. Ex. 2024 ¶ 11. Judge Davis scheduled a *Markman* hearing for March 20, 2020, completion of expert discovery for July 15, 2020, dispositive motions for July 22, 2020, and a trial “currently scheduled” for October 13, 2020, all subject to court-ordered “extensions of time.” Ex. 1059, 34:17-35:25; Ex. 2024, 1, ¶¶ 12-14.

<sup>5</sup> Petitioner’s counsel told Judge Davis “we would be fine with a stay” if the claims alleged to be infringed are covered by the IPRs. Ex. 1059, 11:23–12:18. Patent Owner subsequently added dependent claim 31 to its infringement contentions, and claim 31 is not currently covered by this IPR or related IPR2019-01539.

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