

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUBARU OF AMERICA, INC. ET AL.
Petitioner

v.

CRUISE CONTROL TECHNOLOGIES LLC
Patent Owner

Case IPR2014-00279
Patent 6,324,463

Before JOSIAH C. COCKS, HYUN J. JUNG, and GEORGE R. HOSKINS,
Administrative Patent Judges.

COCKS, *Administrative Patent Judge.*

ORDER

Conduct of the Proceeding
37 C.F.R. § 42.5

1. Introduction

A conference call was held on April 9, 2014 between Judges Cocks, Jung, and Hoskins and counsel for the respective parties. Petitioner, Subaru of America, Inc. et al., (“Petitioner” or “Subaru”) was represented by lead counsel Matthew Satchwell. Patent Owner, Cruise Control Technologies LLC, was represented by lead counsel John Kasha. Also present on the call was counsel representing Petitioners in four separate related *inter partes* review proceedings: IPR2014-00280; IPR2014-00281; IPR2014-00289; and IPR2014-00291. The respective Petitioners for those proceedings are as follows:

IPR2014-00280 – Toyota Motor North America, Inc. et al. (“Toyota”);
IPR2014-00281 – Ford Motor Co. et al. (“Ford”);
IPR2014-00289 – America Honda Motor Co., Inc. et al. (“Honda”); and
IPR2014-00291 – Nissan North America, Inc. et al. (“Nissan”).

Counsel for Patent Owner had requested the conference call seeking authorization to file a motion to join the following five *inter partes* review proceedings: IPR2014-00279; IPR2014-00280; IPR2014-00281; IPR2014-00289; and IPR2014-00291.

2. Discussion

During the conference call, counsel for Patent Owner expressed to the Board that it should be given permission to file a motion to join the above-noted five *inter partes* review proceedings because all of the proceedings are directed to U.S. Patent No. 6,324,463 (“the ’463 patent”) and all effectively include the same parties as Petitioners. In that regard, counsel for Patent Owner conveyed to the Board that while Subaru of America, Inc. is listed as the first “Petitioner” in connection with IPR2014-00279, the collection of parties also listed as “co-

Petitioners” include each of Toyota, Ford, Honda, and Nissan, such that the Petitioner is seemingly the same as between the five above-noted *inter partes* review proceedings. Counsel for Patent Owner thus urged, as a matter of judicial economy, that it be given leave to file a motion to join the five proceedings at this stage into a single proceeding. To that end, counsel for Patent Owner represented that a single panel of administrative patent judges would thereby be able to decide issues in connection with *inter partes* review of the ’463 patent rather than “fifteen” judges warranted for five separate proceedings, and be in a better position to recognize any potential redundancies.

Counsel for Petitioner in this involved *inter partes* review proceeding, as well as representative counsels for the other four related *inter partes* review proceedings, indicated that a motion to join the proceedings would be opposed. To that end, the various counsel represented to the Board that the allegedly different Petitioners would likely not have the same interests in a single proceeding and may not be able to speak with a common voice in connection with a single Petition.

The Board notes that all five Petitions have been assigned the same panel of three judges for decision. Thus, Patent Owner’s concern that Board efficiency is impacted due to the necessity of fifteen administrative patent judges is not germane. The Board, however, also notes that although the five separate Petitions are styled as involving five separate Petitioners, all five involved parties (Subaru Toyota, Ford, Honda, and Nissan) are each listed as either “Petitioners” or “co-Petitioners,” and also as real parties in interest in each Petition. *See, e.g.*, Paper 1, p. 1 of IPR2014-00279.

During the conference call, the panel conferred and determined that the matter of potential joinder warrants additional briefing. Accordingly, the panel authorized Patent Owner to file its requested motion to join the five related

proceedings. Counsel for Patent Owner asked that it be given one month to file the motion in accordance with Board rules. Evidently, the referenced rule is 37 C.F.R. § 42.122(b), which provides that “[a]ny request for joinder must be filed, as a motion under § 41.22, no later than one month after the institution date of any *inter partes* review for which joinder is requested.” However, that one month time period applies only to a request for joinder after the institution date of an *inter partes* review. At this stage of the proceeding, the Board has not yet reached a decision on whether to institute an *inter partes* review. By statute, the Board must determine whether to institute an *inter partes* review within three months after the filing of a patent owner preliminary response. 35 U.S.C. § 314(b)(1). The Board must also be mindful to secure the just, speedy, and inexpensive resolution for every *inter partes* review proceeding. See 35 U.S.C. § 316(b); 37 C.F.R. § 42.1(b).

Patent Owner filed a preliminary response in this involved *inter partes* review proceeding on April 8, 2014 (Paper 15), and has also filed preliminary responses in the other four related proceedings. A month for filing the pertinent motion coupled with a corresponding time period for the filing of an opposition may impede the Board’s ability to timely decide whether to institute *inter partes* review in the proceeding. Although during the conference call, the Board initially indicated that a time period of one month for Patent Owner to file its motion may be appropriate, upon further evaluation, and with the Board’s above-noted temporal obligations in mind, Patent Owner is given until *April 24, 2014* to file its motion to join the five involved *inter partes* review proceedings. Petitioner is given until *May 8, 2014* to file any opposition. The Board has decided that reply briefing by Patent Owner will not be needed. The parties are reminded that the motion and any opposition are each limited to no more than 15 pages as set forth in 37 C.F.R. § 42.24.

3. *Order*

It is

ORDERED that Patent Owner is authorized to file its requested motion to join the following *inter partes* review proceedings:

IPR2014-00279
IPR2014-00280
IPR2014-00281
IPR2014-00289
IPR2014-00291;

FURTHER ORDERED that Patent Owner may file its motion no later than 5 *PM Eastern Time on April 24, 2014*;

FURTHER ORDERED that Petitioner may file an opposition no later than 5 *PM Eastern Time on May 8, 2014*; and

FURTHER ORDERED that no reply to the opposition is authorized.

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