

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRW AUTOMOTIVE US LLC
Petitioner

v.

MAGNA ELECTRONICS, INC.
Patent Owner

Cases

IPR2014-00259 (Patent 7,344,261)
IPR2014-00261 (Patent 7,339,149)
IPR2014-00293 (Patent 8,314,689)
IPR2014-00294 (Patent 8,314,689)¹

Before JUSTIN T. ARBES, PATRICK R. SCANLON,
BART A. GERSTENBLITH, JO-ANNE M. KOKOSKI, and
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

DECISION
Motion to Correct Petition
37 C.F.R. § 42.104(c)

¹ This Decision addresses issues pertaining to all four cases. Therefore, we exercise our discretion to issue one Decision to be filed in each case. The parties are not authorized to use this style heading in subsequent papers.

In each of the instant proceedings, Petitioner filed a Motion to Correct Petition under 37 C.F.R. § 42.104(c) on April 17, 2014, seeking to correct the respective petition for *inter partes* review. Paper 11.² Petitioner also filed in each proceeding a proposed Revised Petition for Inter Partes Review to be substituted for the originally filed petition. Ex. 1015. Patent Owner filed oppositions in each proceeding on April 23, 2014. Paper 14. For the reasons set forth below, we grant each of the motions.

BACKGROUND

Between December 16, 2013, and December 26, 2013, eighteen petitions for *inter partes* review, including the petitions in the four instant proceedings, were filed challenging several of Patent Owner's patents. The information entered via the Patent Review Processing System ("PRPS") identifies TRW Automotive US LLC as the petitioner in all eighteen proceedings. In the four cases that are the subject of this Decision, however, each title page of the respective petition lists "TRW Automotive Holdings Corporation" as the petitioner. Paper 1.

DISCUSSION

A complete petition in an *inter partes* review proceeding gives notice to the patent owner of the basis for relief by laying out the petitioner's grounds and supporting evidence. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,763 (Aug. 14, 2012). Where a party files an incomplete petition, no filing date is accorded. 37 C.F.R. § 42.106.

² As the motions, exhibits, and oppositions in all four proceedings are substantially similar, we refer herein to the papers filed in IPR2014-00259 for convenience.

The Board's rules, however, make allowance for the correction of certain clerical or typographical mistakes, without sacrificing the notice function of the petition. In particular, 37 C.F.R. § 42.104(c) provides:

A motion may be filed that seeks to correct a clerical or typographical mistake in the petition. The grant of such a motion does not change the filing date of the petition.

The Board has noted previously that this rule is remedial in nature and therefore is entitled to a liberal interpretation. *See ABB Inc. v. ROY-G-BIV Corp.*, IPR2013-00063, Paper 21 at 7 (Jan. 16, 2013) (citing *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967)).

Notwithstanding the remedial nature of the rule, the burden remains on the moving party to establish that the purported errors are clerical or typographical mistakes. Petitioner asserts that "USPTO records correctly indicate that all eighteen [petitions] were filed on behalf of TRW Automotive US LLC." Paper 11 at 2 (citing Exs. 1034-51). We find this to be credible evidence that the listing of "TRW Automotive Holdings Corporation" as the petitioner on the title page of the petitions in the four instant proceedings was a typographical mistake, particularly in view of the fact that each title page of the other fourteen petitions identifies TRW Automotive US LLC as the petitioner. In addition, we note that the petition in each of the four instant proceedings states

Petitioner is a defendant in an action filed by Magna Electronics Corporation in the U.S. District Court for the Western District of Michigan. . . . There are two other defendants in the case: TRW Automotive Holdings Corp. and TRW Vehicle Safety Systems Inc. Both entities are corporations related to Petitioner.

Paper 11 at 4-5. As such, each petition indicates that TRW Automotive Holdings Corporation is a defendant "other" than Petitioner. This indication

Cases IPR2014-00259, IPR2014-00261, IPR2014-00293, IPR2014-00294 that TRW Automotive Holdings Corporation and Petitioner are two different entities bolsters Petitioner's assertion that the "TRW Automotive Holdings Corporation" listings were typographical mistakes.

In opposition, Patent Owner argues that Petitioner has not met its burden of demonstrating that the purported errors are clerical or typographical mistakes, noting that Petitioner "does not attempt to explain how the mistake was made, or provide evidence that it was a mistake, or show how the correction would be apparent to a reader." Paper 14 at 2. Patent Owner also argues that the purported errors are not clerical or typographical mistakes. *Id.* at 2-4 (citing *Superior Fireplace Co. v. Majestic Products Co.*, 270 F.3d 1358 (Fed. Cir. 2001)). Patent Owner argues that of the three categories of mistakes identified in *Superior*, Petitioner's purported mistakes are either category 2 or category 3 mistakes, and category 2 and category 3 mistakes are "neither clerical nor typographical." *Id.* at 3-4.

We are not persuaded by Patent Owner's arguments. For the reasons discussed above, we determine that Petitioner has established that the purported errors are typographical mistakes. Furthermore, Patent Owner's reliance on *Superior* for the proposition that "category 2" and/or "category 3" mistakes are not clerical or typographical mistakes is misplaced. Addressing the meaning of clerical or typographical mistakes in the context of certificates of correction under 35 U.S.C. § 255, the *Superior* court states "not all clerical or typographical mistakes are immediately apparent, and even where the mistake is apparent, it may not be clear how the mistake should be corrected. This leads to a classification of these *typographical mistakes* into three categories." *Superior*, 70 F.3d at 1370 (emphasis added). As such, all three categories relate to typographical mistakes, and *Superior* only deems that, based on related provisions in 35 U.S.C. §§ 251-256,

Cases IPR2014-00259, IPR2014-00261, IPR2014-00293, IPR2014-00294 corrections under 35 U.S.C. § 255 of second and third category mistakes that broaden a patent claim are not appropriate. *See id.* at 1372 (stating 35 U.S.C. § 255 should be interpreted to allow a patentee to broaden a claim by correcting “a typographical error only where it is clearly evident from the specification, drawings, and prosecution history how the error should appropriately be corrected”).

Lastly, Patent Owner argues that Petitioner did not serve its motions in compliance with the requirements set forth in 37 C.F.R. § 42.6(e), and, thus, the motions should be expunged. We agree that mailing via U.S. Mail, as indicated in Petitioner’s certificates of service, fails to comply with 37 C.F.R. § 42.6(e). The error appears to be harmless, however, because Patent Owner received notice of the motions and was able to respond. Therefore, we decline to expunge the motions in this instance. The parties must follow Rule 42.6(e) going forward and are encouraged to agree to electronic service pursuant to Rule 42.6(e)(1) to avoid mailing issues, as Patent Owner already has done. *See* Paper 5 at 5.

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner’s Motions to Correct Petition under 37 C.F.R. § 42.104(c) are *granted*; and

FURTHER ORDERED that Petitioner shall file each of its Revised Petitions for Inter Partes Review³ as a paper in the respective proceeding by May 12, 2014, and such petitions shall thereafter be substituted for the respective original petitions.

³ IPR2014-00259, Ex. 1015; IPR2014-00261, Ex. 1012; IPR2014-00293, Ex. 1013; IPR2014-00294, Ex. 1115.

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