

PATENT

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GARMIN INTERNATIONAL, INC. ET AL.
Petitioner

v.

Patent of CUOZZO SPEED TECHNOLOGIES LLC
Patent Owner

Case: IPR2012-00001

Patent No.: 6,778,074

Filed: March 18, 2002

Issued: August 17, 2004

Inventors: Giuseppe A. Cuzzo

Title: Speed Limit Indicator and Method for Displaying Speed and
the Relevant Speed Limit

Docket No.: CUO0001-RE

**PATENT OWNER'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR
DISCOVERY AUTHORIZATION**

The Scheduling Order Provides a Framework for Resolving Claim Construction Issues.

In its opposition brief (Paper 22 at 1), Garmin acknowledges the need for resolving the threshold claim construction dispute over the meaning of “integrally attached.”¹ Cuozzo Speed agrees. Cuozzo Speed disagrees, however, that the Board is tied to its initial decision that was based upon the incomplete and one-sided record Garmin presented in its petition.

Garmin's failure to state constructions in its petition as required under § 42.104(b)(3) cannot preclude the Board's consideration of claim construction issues now. Having passed on that opportunity, Garmin could have requested a rehearing of the Board's decision on its petition. § 42.71. Garmin elected not to do that. Now, the IPR should proceed with Patent Owner's response. The rules and the Board's orders contemplate Cuozzo Speed's response will address the claim construction issues (*see* Trial Practice Guide, 77 Fed. Reg. 48766 (Aug. 14, 2012)), and Garmin is afforded a response (Scheduling Order, Paper 16 at 5). The IPR schedule already accommodates these issues.

IPR Should Proceed on the Claims under Review.

Contrary to Garmin's suggestion, no justification exists for reopening the Board's decision to review claims 10, 14, and 17. As the Board noted in its

¹ Garmin states, “The baseline requirement for nexus is that the claims are commensurate with and cover Garmin's products, which necessarily implicates and requires deciding what is the correct claim construction for this IPR.”

Decision, Garmin failed to present a “reasonable basis to broaden out the interpretation of ‘integrally attached’ to cover the case of a single electronic display.” (Paper 15 at 8). In Patent Owner’s response, Cuozzo Speed will explain in detail why Garmin’s petition fails under any reasonable construction.

The Board’s procedures cannot be blamed for potential “manifest injustice” caused by Garmin’s own strategy. Garmin petitioned for IPR, chose to take no position on claim construction, and chose not to request a rehearing of its petition after the Board issued its decision. If Garmin truly believes review of the claims not in this IPR is appropriate, the proper remedy to Garmin is to petition the Board to initiate another *inter partes* review or other process. Following the rules and procedures will not result in any injustice.

Garmin Acknowledges a Nexus Exists Under Garmin’s Own Construction.

Precluding limited and focused discovery based upon any claim construction is premature. As Cuozzo Speed points out in its motion, even under the Board’s construction, a nexus exists between the claims under review and Garmin’s Personal Navigation Devices (PNDs). The *only* basis upon which Garmin challenges the nexus (i.e., the only basis Garmin argues as to why the claims do not cover the Garmin PNDs) is the Board’s observation, based on the record presented by Garmin, that the speedometer and colored display cannot share an integrated display. This is an application of a claim construction to the device, not

a pure claim construction issue. Contrary to Garmin's position, the Board need not determine the ultimate issue of infringement in order to decide the discovery issue.

Under Cuozzo Speed's proposed construction, a nexus exists, as evidenced by Garmin's admission that Garmin's devices provide a "single electronic display that itself operates both as a speedometer and a colored display." Even under the Board's construction, a nexus exists if the construction is applied to the Garmin PNDs because the speedometer in the PNDs includes more than just the LCD display. For example, Figure 1 of Garmin's U.S. Pat. No. 8,258,978, which cites Cuozzo '074 and is the subject of requested discovery, identifies separately the position determining module 112 (used for providing speed information, 4:12-15) and display device 120. In other words, the LCD display of the Garmin PNDs is part of the speedometer, but it does not constitute the speedometer.

Garmin failed to make this distinction in its petition (and identified only a display as a speedometer in the alleged prior art), and consequently the Board found no reasonable basis to find a shared LCD display fell within the scope of the claims. But based upon Garmin's own admission and the correct construction, the Garmin PNDs are within the scope of the claims and thus a nexus exists.

Garmin initiated this IPR knowing routine discovery of its privies and efforts to commercialize embodiments of Cuozzo Speed's patent would occur. They should be required to play by the rules and participate in the process.

Respectfully submitted,

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