

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT AND TRIAL APPEAL BOARD

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FORD MOTOR COMPANY,  
Petitioner

v.

CUOZZO SPEED TECHNOLOGIES LLC,  
Patent Owner

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Case IPR2014-01393  
Patent 6,778,074

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**PATENT OWNER'S PRELIMINARY RESPONSE TO  
PETITION FOR *INTER PARTES* REVIEW OF  
U.S. PATENT NO. 6,778,074  
UNDER 35 USC §§ 311-319 AND 37 CFR §42.100 ET SEQ.**

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Pursuant to 37 C.F.R. § 42.107(a) Cuozzo Speed Technologies LLC (“Patent Owner”) submits the following preliminary response to Ford Motor Company’s petition.

## **1. Introduction**

The Patent Trial and Appeal Board (“Board”) should exercise its discretion under 35 U.S.C. § 316(b) and deny Ford Motor Company’s (“Ford”) Petition for *Inter Partes* Review (“Petition”) – the third petition for *inter partes* review filed against U.S. Patent 6,778,074 (“‘074 Patent”) – to maintain the integrity of the patent system and prevent Patent Owner from being subject to serial, harassing and seemingly never-ending challenges to the same claims of the same patent.

All of the claims of the ‘074 Patent were challenged by Garmin in IPR2012-00001 (the “First IPR”). IPR2012-00001, Paper 1. The Board denied institution as to all claims, except claims 10, 14 and 17. IPR2012-00001, Paper 15. In its final written decision, the Board cancelled claims 10, 14 and 17 and denied Patent Owner’s motion to amend the claims. IPR2012-00001, Paper 59. Patent Owner appealed the Board’s final written decision to the U.S. Court of Appeals for the Federal Circuit, which has yet to issue a decision on the appeal.

After the Board's final written decision was issued, Garmin filed a second petition for *inter partes* review challenging all of the claims of the '074 Patent. IPR2013-00373 (the "Second IPR"), Paper 1. The Board denied institution of *inter partes* review as to previously-cancelled claims 10, 14 and 17 and claims 7 and 8, because Garmin had failed to meet its burden under 35 U.S.C. § 314(a). IPR2013-00373, Paper 12, p. 1. However, the Board instituted *inter partes* review as to all other claims (1-6, 9, 11-13, 15, 16 and 18-20). *Id.* After institution, the Second IPR was terminated based on settlement between Garmin and Patent Owner.

Now, while the appellate decision from the First IPR is pending and almost one year after the Board instituted the Second IPR, Ford has filed for *inter partes* review of all claims of the '074 Patent.

Patent Owner has not sued, or threatened to sue, Ford or any of its privies (to the best of Patent Owner's knowledge) for infringement of any claim of the '074 Patent. In fact, Patent Owner has never spoken to Ford about the '074 Patent. Thus, Ford's challenge to the claims of the '074 Patent, which comes years after Garmin's two *inter partes* review petitions, can only have one motive – harassment. Preventing "serial and harassing challenges" to a patent was one of the fundamental concerns of Congress when crafting the America Invents Act. *See*

<http://www.leahy.senate.gov/imo/media/doc/PRESS-GoodForSmallBusiness-OnePager-FINAL.pdf>. Accordingly, the Board should exercise its discretion under 35 U.S.C. §316(b) to maintain the integrity of the patent system and deny Ford's petition to discourage untimely, harassment-based challenges.

## **2. Ford's Petition Is Entirely Duplicative Of Garmin's Petition**

Ford expressly states that its Petition is identical to Garmin's petition in the Second IPR, except it has removed the Hauler reference cited by Garmin and included additional allegations of unpatentability of claim 7. IPR2014-01393, Paper 4, pp. 5-6. However, Ford does not provide any reason for why it waited nearly one year to file an admittedly duplicative petition. If Ford had any legitimate desire to challenge the claims of the '074 Patent, it could have joined the Second IPR. This type of laying-in-wait, serial challenge to the '074 Patent is the precise type of harassing conduct Congress was concerned about when constructing the new post-grant proceedings under the America Invents Act. *See* Matal, Joe, A Guide to the Legislative History of the America Invents Act: Part II of II, The Federal Circuit Bar Journal, Vol. 21, No. 4, p. 604 ("In addition, the managers' amendment added procedural limits to both proceedings in order to

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