UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOYOTA MOTOR CORPORATION,
Petitioner,

v.

SIGNAL IP, INC.,
Patent Owner.

Case No. IPR2016-01382
U.S. Patent No. 5,732,375

PETITIONER'S REQUEST FOR REHEARING PURSUANT TO 37 C.F.R. § 42.71(d)

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Petitioner Toyota Motor Corporation respectfully requests rehearing of the Board's decision to deny the petition under 35 U.S.C. § 325(d).[1]

In exercising its discretion to deny the petition, the Board reasoned that the Tokuyama '166 reference presented in this petition is "substantially the same prior art" as the Tokuyama '939 reference ("Tokuyama") presented in the earlier petition. Decision at 11. This conclusion overlooks the critical difference between the two Tokuyama references—a difference which goes to the heart of the patent owner's argument for distinguishing the Tokuyama reference and which, for that reason, could not be more material.

The Tokuyama reference asserted in the earlier petition has 12 seat sensors in Figure 1, nine on the seat portion and three on the front edge of the seat. Ex. 1004, Fig. 1. This permitted the patent owner to argue in opposition to the earlier petition—and permitted the Board to conclude in denying institution—that the claim limitation requiring the algorithm to sum the load ratings for "**all** the sensors" was not met, because the relevant portion of the Tokuyama algorithm sums the readings for only the nine sensors on the seat portion, not the three sensors on the front edge of the seat, and, thus, not **all** 12 sensors. *See* IPR2016-00291, Patent Owner Preliminary Response, Paper 8 (March 14, 2016) at 14–15, 16–17; Decision Denying Institution, Paper 13 (June 10, 2016) at 14–15.

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[1] Decision Denying Institution of *Inter Partes* Review, Paper 12 (January 5, 2017).

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In contrast, the newly asserted Tokuyama '166 reference has only the nine sensors on the seat portion of the seat (in Figure 2). Ex. 1017, Fig. 2. It does not have the sensors on the front edge of the seat like the Tokuyama reference. Accordingly, it completely obviates the patent owner's argument that the Tokuyama algorithm does not sum load ratings for "**all** the sensors." *See* Petition (Paper 2) at 23–25, 40–43, 55; Andrews Declaration (Ex. 1009) at 25–27, 43–46, 57; Reply (Paper 11) at 2–3. Thus, the difference between the two Tokuyama references is critically material. One permits the patent owner to make its argument for distinguishing Tokuyama, and one does not.

The Board did not explain its basis for concluding that the two Tokuyama references are substantially the same other than to state generally that Tokuyama '166 "discloses a very similar system to Tokuyama." Decision at 11. While the Board acknowledged the difference in the number of sensors between the two Tokuyama references, it did not address Petitioner's argument or appear to appreciate why this difference is so critical. Thus, it appears that the Board either overlooked or failed to appreciate the importance of this difference between the two Tokuyama references to the "all the sensors" issue.

Moreover, the Board's failure to appreciate this important difference between the two Tokuyama references appears to be confirmed by its suggestion that Petitioner should have sought rehearing instead of filing a second petition.

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Decision at 11. While Petitioner could have sought rehearing of other arguments,[2] it could not have relied upon the Tokuyama '166 reference to rebut the argument that Tokuyama did not sum load ratings for "**all** the sensors," because Tokuyama '166 was not presented in the earlier petition.[3]

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[2] In denying institution of Petitioner's earlier petition, the Board also found Petitioner's evidence that Tokuyama would teach persons skilled in the art to sum binary load ratings to be insufficient, because the Board found that the declaration of Scott Andrews on this point was "conclusory." *See* IPR 2016-00291, Decision Denying Institution, Paper 13 (June 10, 2016) at 13–14. The current petition also differs materially from the earlier petition because, in response to the Board's finding, the current petition includes an expanded declaration from Mr. Andrews that explains his reasoning on this point in detail. *See* Andrews Declaration (Ex. 1009) at 35–42; *see also* Petition (Paper 2) at 32–39.

[3] Patent Owner's argument that Petitioner has not shown why it could not have presented Tokuyama '166 in the earlier petition is beside the point. As explained in Petitioner's Reply, there is no reason why a petitioner cannot file a second petition within the one year time limit that specifically addresses the deficiencies of an earlier petition and that is materially different for that reason. *See* Reply (Paper 11) at 1–3.

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Accordingly, Petitioner respectfully requests that the Board reconsider its procedural decision to deny institution under 35 U.S.C. § 325(d), and decide this petition on the merits.

Dated: February 6, 2017

Respectfully submitted,

/ George E. Badenoch /

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