

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION
(d/b/a WABTEC CORPORATION),
Petitioner,

v.

SIEMENS INDUSTRY, INC.,
Patent Owner.

Case IPR2017-00580
Patent 9,233,698 B2

Before KRISTEN L. DROESCH, MEREDITH C. PETRAVICK, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

DROESCH, *Administrative Patent Judge*.

ORDER
Granting Petitioner's Request to Submit Supplemental Information
37 C.F.R. § 42.123(b)

In an e-mail received by the Board on June 25, 2018, counsel for Petitioner sought a conference call with the Board to request authorization to file a motion to submit supplemental information pursuant to 37 C.F.R. § 42.123(b). According to the e-mail, Petitioner seeks to submit, as supplemental information, a recent district court order on Patent Owner's district court motion for reconsideration of claim construction (Ex. 1033). Given the limited nature of Petitioner's request and the advanced stage of this proceeding, we determine that briefing on the motion to submit supplemental information is not necessary.

We determine that Petitioner has made a sufficient showing that the requirements of 37 C.F.R. § 42.123(b) are satisfied, considering that: (1) the supplemental information could not have been obtained earlier because the district court's order was recently entered on June 20, 2018; (2) the district court's order may be relevant to the Board's determination of the broadest reasonable interpretation of a claim term, and (3) reviewing the district court's order would place minimal additional burden on the Board. *See Ultratec, Inc. v. CaptionCall, LLC*, 872 F.3d 1267, 1272–73 (Fed. Cir. 2017); *see also Power Integrations, Inc. v. Lee*, 797 F.3d 1318 (Fed. Cir. 2015) (“The fact that the board is not generally bound by a previous judicial interpretation of a disputed claim term does not mean, however, that it has no obligation to acknowledge that interpretation or to assess whether it is consistent with the broadest reasonable construction of the term.”). Patent Owner may present arguments responsive to the submission of the supplemental information in a brief responsive paper.

ORDER

Accordingly, it is:

ORDERED that Petitioner's request to submit supplemental information is granted;

FURTHER ORDERED that Petitioner shall submit the proposed supplemental information as an exhibit no later than one week from the date of this Order;

FURTHER ORDERED that Petitioner may submit, along with the supplemental information, a paper of no more than two pages describing the relevance of the supplemental information to the issues of this proceeding; and

FURTHER ORDERED that Patent Owner may submit, no later than one week after the filing of the supplemental information, a responsive paper of no more than two pages.

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