

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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KYOCERA INTERNATIONAL, INC.,  
Petitioner,

v.

BLUE SPIKE, LLC and WISTARIA TRADING LTD.,  
Patent Owners.

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Case IPR2017-01061 (Patent 5,745,569)  
Case IPR2017-01109 (Patent 8,930,719 B2)<sup>1</sup>

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Before DEBRA K. STEPHENS, PATRICK R. SCANLON, and  
AMANDA F. WIEKER, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

DECISION

Granting Petitioner's Motion to Dismiss  
Dismissing Patent Owner's Motion for District Court-Type  
Claim Construction

*37 C.F.R. §§ 42.5(a), 42.20, 42.71(a), 42.100(b)*

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<sup>1</sup> This Decision addresses issues that are identical in the two cases. Therefore, we exercise our discretion to issue a single decision to be filed in each case. The parties are not authorized to use a similar caption.

## I. MOTIONS TO DISMISS

In each of the instant proceedings, Petitioner filed an Unopposed Motion to Dismiss (Paper 10)<sup>2</sup> on May 5, 2017. At the time of the filing of these Motions, the Board had not authorized such filings. 37 C.F.R. § 42.20(b) provides: “[a] motion will not be entered without Board authorization.” In these cases, Petitioner had sought authorization to file its Motions via an email to the Board on May 3, 2017, but was informed at that time that these proceedings had not yet been empaneled and its requests for authorization would be presented to the panel upon empanelment. Paper 10, 1. Nevertheless, Petitioner filed its motions before empanelment “to relieve the need for appointment of any Panel, and [for] the attendant conservation of resources.” *Id.*

The Board generally does not act on motions to dismiss prior to a panel being empaneled. Thus, despite its admirable intentions, Petitioner should have awaited the Board’s authorization before filing its Motions. In view of the present circumstances, however, we retroactively authorize filing of Petitioner’s Motions.

Each of these proceedings is still in a preliminary stage. Patent Owners have not filed preliminary responses, and we have not considered the merits of the Petitions. Furthermore, according to Petitioner, the parties met and conferred, and Patent Owners do not oppose the Motions. *Id.* Petitioner also asserts that dismissal of the Petitions “will preserve the

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<sup>2</sup> With respect to the papers discussed herein, the parties filed substantially similar papers in each proceeding. For convenience, the paper numbers cited herein refer to IPR2017-01061.

IPR2017-01061 (Patent 5,745,569)  
IPR2017-01109 (Patent 8,930,719 B2)

Board's resources and the parties' resources while also epitomizing the Patent Office's policy of 'secur[ing] the just, speedy, and inexpensive resolution'" of the proceedings in accordance with 37 C.F.R. § 42.1(b). *Id.* at 2. Under these circumstances, we determine that it is appropriate to dismiss the petitions. *See* 37 C.F.R. §§ 42.5(a), 42.71(a). This Decision does not constitute a final written decision pursuant to 35 U.S.C. § 318(a).

## II. MOTIONS FOR DISTRICT COURT-TYPE CLAIM CONSTRUCTION

Patent Owner, in each respective proceeding, and without prior authorization from the Board, filed a Motion for District Court-Type Claim Construction (Paper 7). Petitioner filed a Response to Patent Owner's Motion (Paper 9) in each proceeding. Although Patent Owners are reminded that they should have sought the Board's authorization before filing, we retroactively authorize filing of Patent Owners' Motions.

Our decision to grant Petitioner's Motions to Dismiss renders Patent Owners' Motions moot. Accordingly Patent Owners' Motions are dismissed.

### ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's Motion to Dismiss in each of the instant proceedings is *granted*;

FURTHER ORDERED that the Petition in each of the instant proceedings is *dismissed*; and

IPR2017-01061 (Patent 5,745,569)  
IPR2017-01109 (Patent 8,930,719 B2)

FURTHER ORDERED that Patent Owner's Motion for District Court-Type Claim Construction in each of the instant proceedings is *dismissed*.

IPR2017-01061 (Patent 5,745,569)  
IPR2017-01109 (Patent 8,930,719 B2)

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