

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NAVISTAR, INC.,
Petitioner,

v.

FATIGUE FRACTURE TECHNOLOGY, LLC,
Patent Owner.

Case IPR2018-00853
Patent 7,143,915 B2

Record of Oral Hearing
Held: June 11, 2019

Before LINDA E. HORNER, BENJAMIN D. M. WOOD, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

Case IPR2018-00853
Patent 7,143,915 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Tuesday, June 11, 2019, commencing at 10:00 a.m. at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

PROCEEDINGS

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9:59 a.m.

JUDGE HORNER: Good morning. We will hear argument now on Case Number IPR2018-00853. Navistar Incorporated versus Fatigue Fracture Technologies. This is concerning Patent 7,143,915.

Counsel for the parties, please introduce yourselves, starting with Petitioner.

MR. LEAVELL: Good morning, Your Honor. Craig Leavell on behalf of Navistar.

MR. KAMPS: Good morning, Your Honor, it's Matt Kamps on behalf of Navistar.

MS. ADDY: Good morning, Your Honor, Meredith Addy on behalf of Fatigue Fracture Technology.

MR. HART: I'm Robert Hart on behalf of Fatigue Fracture Technology.

JUDGE HORNER: Great. Thank you. And welcome to the court. Per our order of May 14th, each side will have 60 minutes to argue. The Petitioner bears the burden of proving unpatentability and so they'll be arguing first, and you may reserve rebuttal time, and patent owner may reserve sur-rebuttal time. Do wish to reserve rebuttal time?

MR. LEAVELL: We do, Your Honor, 15 minutes, please.

JUDGE HORNER: Fifteen minutes, okay. And would you wish to reserve sur-rebuttal time?

1 MS. ADDY: Yes, Your Honor, ten minutes.

2 JUDGE HORNER: Ten minutes, okay.

3 Okay, this hearing is open to the public. We're going to have a full
4 transcript made, and it will become part of the record. For clarity in the
5 transcript, when you're referring to demonstrative slides, if you can just note
6 the slide number for the record that would be very helpful.

7 I'll remind you that demonstratives are not evidence but are aids to
8 assist the panel. And we're aware of the pending motion -- Petitioner's
9 pending motion to strike portions of the patent owner's sur-reply and
10 exhibits. And we're also aware of the pending motions filed by each party
11 on the motions to exclude and also objections to demonstratives.

12 At this time, we're going to reserve ruling on those motions and
13 objections, and we will allow discussion of the arguments and the exhibits
14 and demonstratives here today. But ultimately, we will not consider them
15 in our final written decision if we determine that the reliance on them would
16 be improper.

17 With that, I invite counsel for Petitioner to begin.

18 MR. KAMPS: And we've got copies of our slides. I know we
19 were supposed to bring one. I brought four if you'd like them. If you don't
20 want them, fine.

21 JUDGE HORNER: We have copies of the slides there.

22 MR. KAMPS: Okay.

23 (Off-microphone comments.)

1 MR. KAMPS: Good morning, Your Honors. My name is Matt
2 Kamps and, along with Craig Leavell, lead counsel in this case working on
3 behalf of Petitioner, Navistar, we respectfully request cancellation of the
4 challenge claims on the '915 patent.

5 We've already reserved rebuttal time, and you've already addressed
6 that we have motions pending. So I'm not going to belabor any of these
7 points here. I do want to step through a couple of these points very quickly,
8 however.

9 Navistar's two pending motions before the Board, Papers 35 and 40,
10 are Motions to Strike and Motion to Exclude, respectively. Just wanted to
11 note that the first issue here, secondary considerations argument presented in
12 FFT sur-reply, that issue's been mooted by stipulation of the parties.

13 The remaining two, however, may ripen before the Board, we have
14 new claim construction arguments and newly filed sur-reply Exhibits 2051
15 and 2056. We respectfully request that those are stricken from the record as
16 improper, untimely, prejudicial to Navistar in the contravention of this
17 Board's decisions, and also the trial practice guidelines promulgated in 2018.

18 I do want to mention one thing that's in the vein of our Motion to
19 Strike. And that's that this Board is going to hear today yet another new
20 claim construction argument, which we know is improper at the oral
21 argument stage. And I just wanted to tee that up for the Board.

22 FFT will present on Slides 9, 10, and 21, or at least those slides of its
23 demonstratives, that now that the fatigue force is terminated while the part
24 has considerable load bearing capacity. This is a new argument that was

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