Paper: 10
Date: July 14, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEX RECREATION CORP.
Petitioner

v.

BESTWAY INFLATABLES & MATERIALS CORP.
Patent Owner

U.S. Patent No. 10,687,633
Filing Date: Sept. 29, 2016
Issue Date: June 23, 2020
Title: Inflatable Bed

Case IPR2023-00489

PETITIONER'S PRELIMINARY REPLY (PER BOARD AUTHORIZATION, PAPER 9)

Petitioner respectfully notifies the Board of the following decisions issued after the filing of the Petition.

In *Samsung Electronics v. Hardin*, the Board granted institution on three petitions. IPR2022-01330 (Paper 13), -01331 (Paper 14), -01332 (Paper 13) (PTAB Feb. 8, 2023). The Board noted that: (1) the petitions "were filed concurrently" so the Petitioner "did not gain a timing advantage that might otherwise occur were the petitions filed serially"; (2) the three proceedings "can be coordinated" and "a common schedule adopted"; and (3) the "overlapping arguments and evidence" across the petitions "will create at most a relatively small amount of additional effort by the parties and the Board[.]" IPR2022-01330, Paper 13 at 23. The Board also looked to the Trial Practice Guide's ("TPG") instruction that patent owners "clearly proffer any necessary stipulations" to avoid the need for multiple petitions and the patent owner's apparent failure to proffer such a stipulation. *Id.* at 22.

These same reasons justify instituting multiple petitions here. (*See* Paper 3.) Petitioner filed each Petition on the same day, so Petitioner gained no tactical advantage by filing multiple petitions, and consolidation of all the proceedings is appropriate. Moreover, while material differences (not redundancy, as Patent Owner asserts) necessitated the filing of multiple petitions, the overlapping arguments and evidence—*e.g.*, the same independent claim addressed in all petitions and common references used in all petitions—will result in efficiencies. Finally, despite

Petitioner's offer and the TPG instruction, Patent Owner refuses to enter any stipulation regarding the non-asserted claims that could completely eliminate the need for two petitions. (Paper 8, at 9.)

Further, in *Wirtgen America v. Caterpillar*, the Board found that an "ambiguity in the prosecution history" warranted institution of two petitions so that the petitioner could address both possibilities presented by the ambiguity. IPR2022-01395, Paper 9 at 47 (P.T.A.B. Mar. 10, 2023). Similarly here, not only did Petitioner need to address Lin's U.S. and related EU prosecutions (rather than staying silent on it, as Patent Owner suggests), but also potential arguments regarding Aoki's disclosures. (IPR2023-00489, Paper 3 at 3-4; Paper 1 at 7-10, 35-38, 84-86.)

FAEGRE DRINKER BIDDLE & REATH

Dated: July 14, 2023

By: /Reid E. Dodge/
Reid E. Dodge
Reg. No. 74,499

TYPE-VOLUME CERTIFICATION

Pursuant to 37 C.F.R. §42.24(d), Petitioner hereby certifies that the foregoing Preliminary Reply contains 348 words as calculated by Microsoft Word 2010, the word processing system used in its preparation.

FAEGRE DRINKER BIDDLE & REATH

Dated: July 14, 2023

By: /Reid E. Dodge/
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §42.6(e), I hereby certify that on July 14, 2023, I caused a true and correct copy of Petitioner's Preliminary Reply, to be served via email to the following:

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Counsel of record for Patent Owner consented to receive service by email at the addresses listed above.

FAEGRE DRINKER BIDDLE & REATH

Dated: July 14, 2023

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