

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PELOTON INTERACTIVE, INC.,
Petitioner,

v.

NEC CORPORATION,
Patent Owner.

IPR2023-01239
Patent 8,752,101 B2

Before MICHAEL J. STRAUSS, CHARLES J. BOUDREAU, and
CHRISTOPHER L. OGDEN, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

In an e-mail to the Board dated August 28, 2023 (Ex. 3001), Peloton Interactive, Inc. (“Petitioner”) requests authorization to correct the Petition in the above-identified *inter partes* review proceeding. According to Petitioner, the Petition and the accompanying Declaration of Clifford Reader, Ph.D. (“Reader Declaration”)¹ “incorrectly refer to EX1016 as U.S. Patent No. 5,867,230 to Wang et al. (‘Wang ’230’) instead of U.S. Patent No. 7,606,928 to Wang et al. (‘Wang ’928’) and failed to list Wang ’230 as EX1038.” Petitioner further requests Wang ’928 be filed as Exhibit 1016 and corresponding exhibit designation corrections be made. Petitioner seeks correction of the noted mistakes as constituting clerical and/or typographical mistakes correctable under 37 C.F.R. § 42.104(c), which provides that “[a] motion may be filed that seeks to correct a clerical or typographical mistake in the petition” and that “[t]he grant of such a motion does not change the filing date of the petition.” NEC Corporation (“Patent Owner”) responded by e-mail on August 29, 2023 (Ex. 3002), opposing Petitioner’s request and arguing the alleged mistakes are not clerical or typographical mistakes correctable under 37 C.F.R. § 42.104(c) because they introduce a new prior art reference and substantively alter the asserted grounds after the bar date for the Petition has passed.

On October 24, 2023, Judges Strauss, Boudreau, and Ogden held a conference call with the parties. Scott C. Weidenfeller of Covington & Burling LLP argued for Petitioner, and Eliot D. Williams of Baker Botts LLP argued for Patent Owner. During the call, we authorized Petitioner to file a motion seeking the requested relief and we authorized Patent Owner to

¹ Non-public and public versions of the Reader Declaration are filed as Exhibits 1006 and 1037, respectively.

file an opposition to Petitioner's motion. We also granted an extension of the deadline for Patent Owner to file any preliminary response to the Petition until one week following the Board's decision on the authorized motion to correct. We did not authorize any reply.

In consideration of the foregoing, it is

ORDERED that Petitioner's request for authorization to file a motion to correct the Petition and Reader Declaration described in the email dated August 28, 2023, and its accompanying attachments (Ex. 3001) is granted;

FURTHER ORDERED that Petitioner's motion to correct the Petition must be no more than seven pages, and filed no later than October 31, 2023;

FURTHER ORDERED that Patent Owner may file an opposition to Petitioner's motion to correct the Petition;

FURTHER ORDERED that Patent Owner's opposition must be no more than seven pages, and filed no later than November 7, 2023;

FURTHER ORDERED that that due date for filing Patent Owner's preliminary response to the Petition is hereby extended from November 9, 2023, to one week after a decision on Petitioner's motion to correct the Petition is issued; and

FURTHER ORDERED that no other due date is modified.

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