

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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KINGSTON TECHNOLOGY COMPANY, INC.,  
Petitioner,

v.

CATR CO., LTD.,  
Patent Owner.

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Case IPR2015-00559  
Patent 6,926,544 B2

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Before THOMAS L. GIANNETTI, BART A. GERSTENBLITH, and  
DAVID C. MCKONE, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

DECISION

Denying Patent Owner's Motion to  
File a Request for a Certificate of Correction  
*37 C.F.R. § 42.20*

I. DISCUSSION

On July 9, 2015, we issued an Order granting authorization to Patent Owner to file a motion to request a Certificate of Correction (Paper 23). Patent Owner filed said motion on July 13, 2015 (Paper 24; "Mot.").

Petitioner filed an opposition to Patent Owner's motion on July 20, 2015 (Paper 30).

Patent Owner's motion indicates that the claims should be "corrected" to reflect that the cover pivots with respect to the flash memory main body. Mot. 2. In particular, Patent Owner seeks to change the phrase "pivoting the case" in claims 1, 7, and 24 of U.S. Patent No. 6,926,544 B2 ("the '544 patent") to "pivoting the cover." Ex. 2009 (draft Certificate of Correction).

35 U.S.C. § 255 provides the following with respect to a certificate of correction of an applicant's mistake:

Whenever a mistake of a clerical or typographical nature, or of minor character, which was not the fault of the Patent and Trademark Office, appears in a patent and a showing has been made that such mistake occurred in good faith, the Director may, upon payment of the required fee, issue a certificate of correction, if the correction does not involve such changes in the patent as would constitute new matter or would require re-examination. Such patent, together with the certificate, shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form.

37 C.F.R. § 1.323 provides:

The Office may issue a certificate of correction under the conditions specified in 35 U.S.C. [§] 255 at the request of the patentee or the patentee's assignee, upon payment of the fee set forth in § 1.20(a). If the request relates to a patent involved in an interference or trial before the Patent Trial and Appeal Board, the request must comply with the requirements of this section and be accompanied by a motion under § 41.121(a)(2), § 41.121(a)(3) or § 42.20 of this title.

The following facts pertain to the timing of Patent Owner's motion. Patent Owner previously filed a request for a certificate of correction on

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February 1, 2006. Ex. 1002, 148. In 2014, Patent Owner asserted the '544 patent against Petitioner in the United States District Court for the Central District of California. Paper 7, 2. On October 24, 2014, Petitioner filed a first petition challenging several claims of the '544 patent in IPR2015-00149. Patent Owner filed a preliminary response in IPR2015-00149 on January 21, 2015, and we instituted an *inter partes* review of several claims of the '544 patent on April 15, 2015. On January 14, 2015, Petitioner filed the instant Petition, to which Patent Owner filed its Preliminary Response on April 13, 2015. On May 11, 2015, we issued our Decision Instituting an *inter partes* review.

Although the '544 patent was the subject of each of these actions, and Patent Owner's attention was, or should have been, focused on the claims therein, Patent Owner waited until July 2015 to request correction of claims 1, 7, and 24. Additionally, the parties in each of these *inter partes* reviews (the instant proceeding and IPR2015-00149) prepared their papers based upon the present language of the claims.<sup>1</sup> Potential changes to the claims at this stage could lead to a moving target that is unfair to Petitioner given the circumstances discussed above.

Accordingly, in light of the above facts, and additional fact that the upcoming oral hearing is less than two months away, Patent Owner's motion is *denied*.

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<sup>1</sup> We disagree with Patent Owner's characterization (Mot. 2) that Petitioner and Dr. Wolfe, Petitioner's declarant, applied the references to the claims as though the claims read as Patent Owner seeks to correct. Rather, the Petition and the Wolfe Declaration analyze the claims as currently drafted. *See, e.g.*, Pet. 19–20 (analyzing claim 1, including the recitation “pivoting the case with respect to the flash memory main body”); Ex. 1016 ¶ 262 (same).

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II. ORDER

It is:

ORDERED that Patent Owner's Motion to File a Request for a Certificate of Correction (Paper 24) is *denied*.

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