

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COOLER MASTER CO., LTD.  
Petitioner,

v.

AAVID THERMALLOY LLC  
Patent Owner.

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Case IPR2019-00147  
Patent 7,100,680

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**MOTION & CERTIFICATION UNDER 37 C.F.R. § 42.100(b)  
REQUESTING DISTRICT COURT-TYPE CLAIM CONSTRUCTION**

## **I. Notice of Request for Relief**

Pursuant to 37 C.F.R. § 42.100(b), Patent Owner Aavid Thermalloy LLC (“Aavid”) requests that the Board apply a district court-type claim construction approach in this proceeding. With respect to petitions for *inter partes* review filed prior to November 13, 2018, Rule 37 C.F.R. § 42.100(b) provides in part:

A party may request a district court-type claim construction approach to be applied if a party certifies that the involved patent will expire within 18 months from the entry of the Notice of Filing Date Accorded to Petition. The request, accompanied by a party’s certification, must be made in the form of a motion under § 42.20, within 30 days from the filing of the petition.

On November 29, 2018, the Board authorized Aavid to file this motion under 37 C.F.R. § 42.100(b).

The patent subject to this proceeding, U.S. Patent 7,100,680 (“the ’680 Patent”), was filed on August 9, 2005, and claims priority to Application No. 09/310,397, which was filed on May 12, 1999. The ’680 Patent will expire no later than May 12, 2019, which is less than 18 months from the entry of the Notice of Filing Date Accorded to Petition (Paper 4) that was mailed November 21, 2018. Furthermore, this motion is submitted within 30 days from the filing of the Petition. The Notice mailed November 21 indicates that the Petition was accorded a filing date of November 1, 2018, and this motion is made on November 30, 2018.

Claims of an expired patent should be construed by the Board under the principles of *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed.Cir. 2005) (*en banc*). See *In re Rambus, Inc.*, 753 F.3d 1253, 1256 (Fed.Cir. 2014). The reasoning of *Rambus* similarly supports applying a district court-type construction in this case, particularly since the claims of the '680 Patent are also the subject of two related proceedings (IPR2019-00334 and -00338) that were filed after November 13, 2018, and therefore a district court-type claim construction will be applied in those proceedings.

In addition, Petitioner does not oppose this Motion.

## **II. Certification**

Aavid hereby certifies, through the undersigned signature of its counsel, that the '680 Patent will expire no later than May 12, 2019, which is 20 years from the filing date in the United States of the earliest non-provisional patent application from which the '680 Patent claims priority. 35 U.S.C. § 154. Aavid further certifies that this expiration date is within 18 months from the entry of the Notice of Filing Date Accorded to Petition.

## **III. Requested Relief**

Aavid respectfully requests that the Board apply a district court-type claim construction in this proceeding.

Respectfully submitted,

MICHAEL BEST & FRIEDRICH LLP

Dated: November 30, 2018

/ kenneth m. albridge III /

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## **Certificate of Service**

Pursuant to 37 C.F.R. § 42.6, I hereby certify that a copy of the foregoing document was served by electronic mail upon the following:

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