

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MANITOWOC FOODSERVICE COMPANIES, LLC,
Petitioner Application No. 17/978,751,
Petitioner,

v.

NEWTON CFV, LLC,¹
Respondent Application No. 17/382,693,
Respondent.

DER2023-00006

Before RAE LYNN P. GUEST, JOHN E. SCHNEIDER, and DAVID
COTTA, *Administrative Patent Judges*.

SCHNEIDER, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing
37 C.F.R. § 42.71(d)

¹ On May 21, 2025, Respondent filed an Update Mandatory Notice Pursuant to 37 C.F.R. 42.8 stating that the '693 application had been assigned to Newton CVF, LLC. (Paper 20). We have updated the caption accordingly.

On April 18, 2025, we issued our decision denying Manitiwoc Foodservice Companies LLC’s (Petitioner) request to institute a derivation proceeding against U.S. Application No. 17/382,693 assigned to Newton CFV, LLC. (“Respondent”). (“Decision”) (Paper 12). On May 19, 2025, Petitioner filed a Request for Rehearing or Reconsideration. (“Request”) (Paper 17). We have considered Petitioner’s Request, and for the reasons set forth below, we deny the request.

As set forth in our rules, a request for rehearing “must specifically identify all matters the party believes the Board misapprehended or overlooked, and where each matter was previously addressed.” 37 C.F.R. §42.71(d). A request for rehearing may not include new evidence absent a showing of good cause why the evidence was not presented earlier. *Huawei Device Co., Ltd. v. Optis Cellular Tech., LLC*, Case IPR2018-00816, slip op. at 4 (PTAB Jan. 8, 2019) (Paper 19) (precedential). Such evidence includes declarations, and timely declarations must be filed in the form of an exhibit. 37 C.F.R. § 42.63(a). As Petitioner’s Request does not comply with our rules, we deny the Request.

Concurrent with its Request, Petitioner filed a second Declaration of Kenneth Lundberg. (“Lundberg 2d Decl.”) (Paper 18).² In the Declaration, Mr. Lundberg explains how various exhibits disclosed elements of his

² The copy of Mr. Lundberg’s Second Declaration which accompanied the Request was not filed as an Exhibit and is unsigned. A day later, on May 20, 2025, Petitioner filed a second signed copy of the declaration, but did not request permission to do so, nor did Petitioner attempt to explain why the signed copy of the second Declaration could not have been filed with the request.

invention. Lundberg 2d Decl. ¶¶ 3–9. None of this testimony was provided in the first Declaration of Kenneth Lundberg filed with the Petition.

Compare Declaration of Kenneth Lundberg (Paper 2) with Lundberg 2d Decl. (Paper 18). Thus, the Second Lundberg Declaration constitutes untimely filed new evidence.³ Appellant has not explained why the testimony in the Second Lundberg Declaration was not include in Mr. Lundberg’s first Declaration nor provided a showing of good cause why the evidence was not presented earlier. *See* Request 3. Therefore, we decline to consider Mr. Lundberg’s Second Declaration.

Turning to the Request, it too is deficient. A Request for Rehearing must include specific identification of matters which the requesting party believes the Board overlooked or misapprehended. 37 C.F.R. § 42.71(d). A Request for Rehearing is not an opportunity to present new arguments. Moreover, Petitioner has not shown that we misapprehended or overlooked any particular matters in the Petition.

In our Decision, we found that the Petitioner had not shown that the claim element in Respondent’s claim 1 reciting “a first water flow from a water source to a cleaner CFValve and then to a cleaner cannister as well as a separate sanitizer CFValve that provides a second flow of water from the water source to a sanitizer canister” was communicated to Respondent. Decision 10–12. We noted that Petitioner relied on Ex. 1003 to show

³ In our Order Denying Petitioner’s Request for an Extension of Time (Paper 15), we reminded Petitioner that we prohibit the introduction of new evidence in a request for rehearing including a new declaration. Order 3.

communication of this element to Respondent and that the figure shows only a single CFV valve connected by a single water flow to both the sanitizer cartridge and cleaner canister. *Id.* at 11.

Appellant now argues that in addition to Ex. 1003, Ex. 1006 shows this element. Request 6–7. Petitioner, however, has not shown where this argument was made in its original Petition. *See id.* A review of the original petition reveals Ex. 1006 was not referenced in the discussion of this element. Petition 22. Since Ex 1006 was never discussed in the petition with respect to this claim element, we could not have overlooked or misapprehended this argument.

In addition, in our Decision, we found Petitioner had failed to demonstrate that the claim element in Respondent’s claim 1 reciting “a controller that controls one or more ratios based on the inlet total dissolved solids and the outlet total dissolved solids” was communicated to Respondent. Decision 12. In the Request, Petitioner contends this element was disclosed to Respondent in Exs. 1003, 1005, 1006, and 1007. Request 7–11. Here again, Petitioner fails to indicate where these Exhibits were discussed in the Petition with respect to this claim element. *Id.*

A review of the discussion in the Petition concerning the claim element calling for “a controller that controls one or more ratios based on the inlet total dissolved solids and the outlet total dissolved solids” reveals that Petitioner relied solely on Ex. 1005 as disclosing the limitation. Pet. 23. Since Petitioner did not cite to Exs. 1003, 1006, and 1007 as teaching this

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limitation, we could not have overlooked or misapprehended Petitioner's argument with respect to those exhibits.

Petitioner next contends that additional elements of Respondent's claim 1 were communicated to Respondent. Request 12–16. Again, Petitioner fails to show where these arguments were made in the original Petition. *See id.* Once again, we could not have overlooked or misapprehended arguments that were not presented in the Petition.

Based on the foregoing, we deny Petitioner's Request for Rehearing.

In consideration of the foregoing, it is hereby:

ORDERED that Respondent's Request for Rehearing or Reconsideration (Paper18) is *denied*.

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