

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FONTAINE ENGINEERED PRODUCTS, INC.
Petitioner

v.

RAILDECKS (2009), INC.
Patent Owner

Case IPR2013-00361
Patent 8,353,647 B2

Before BRIAN J. McNAMARA, RAMA G. ELLURU, and JAMES B. ARPIN,
Administrative Patent Judges.

ELLURU, *Administrative Patent Judge.*

DECISION
Petitioner's Request for Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

Fontaine Engineered Products, Inc. (“Petitioner”) filed a request for rehearing (Paper 9, “Rehearing Req.”) of our decision (Paper 8, “Decision”) denying an *inter partes* review of challenged claims 14-25 of U.S. Patent No. 8,353,647 B2 (Ex. 1101, “the ’647 patent”). In the Decision, we interpreted the term “stacking block” recited in independent claim 14, the only challenged independent challenged claim, as *a block that forms the highest point along the top profile of the transport platform when in a stowed position such that when another transport platform or other intermodal container is seated on top, none of the collapsed structure will receive any load.* Decision 9. In its request for rehearing, Petitioner contends that we incorrectly and impermissibly interpreted “stacking block” because we “explicitly incorporated several extraneous limitations directly from the specification into the claims, and included limitations from an embodiment not covered by the challenged claims.” Rehearing Req. 1. For the reasons stated below, Petitioner’s request for rehearing is *denied*.

II. STANDARD OF REVIEW

Under 37 C.F.R. § 42.71(c), “[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” An abuse of discretion occurs when a “decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus. Inc. v. Celanese Polymer Specialties Co. Inc.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988); *see also* 37 C.F.R. § 42.71(d). In its request for rehearing, the dissatisfied party must identify the place in the record where it previously addressed each matter it submits for review. 37 C.F.R. § 42.71(d).

III. DISCUSSION

We interpreted the term “stacking block” *in light of* the ’647 patent’s Specification, which states that “[t]he stacking blocks 116 form the highest point along the top profile of the transport platform 100. Accordingly, when another transport platform 100 or other intermodal container is seated on top of the one shown, none of the collapsed structure will receive any load.” Ex. 1101, 13:24-28; *see* 37 C.F.R. § 42.100(b); *see also* Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48766 (Aug. 14, 2012). Thus, the ’647 patent’s Specification provides a definition of “stacking blocks” with reasonable clarity, deliberateness, and precision.” *See In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

In its request for rehearing, Petitioner argues that “[t]he ’647 patent discloses two embodiments” and that we improperly relied on the first embodiment in interpreting “stacking block.” According to Petitioner, the first embodiment “features a ‘stacking block’ that is not ‘mounted to each brace’ and does not move together with the brace,” as recited by claim 14. Rehearing Req. 4 (emphasis deleted). Petitioner’s argument is not persuasive.

The two embodiments to which Petitioner refers are two embodiments of intermodal transport platforms. Ex. 1001, 7:37-39, 16:41-43; figs. 3 and 17. Intermodal transport platform 100 (“the first embodiment”), illustrated in Figures 3 and 7, includes “stacking blocks 116,” and intermodal transport platform 200 (“the second embodiment”), illustrated in Figure 17, includes “stacking blocks 216.” *Id.* at 13:22-28, 18:18-21. From our review of the ’647 patent’s Specification, we did not conclude that stacking blocks 216 are a different embodiment of the recited

“stacking block” than stacking blocks 116. Petitioner’s Rehearing Request does not point us to such disclosure.

Petitioner argues that the Decision’s reliance on stacking blocks 116 in the first embodiment is improper because “the first embodiment features a ‘stacking block’ that is not ‘mounted to each brace’ and does not move together with the brace,” as recited in challenged claim 14. Rehearing Req. 4 (emphasis deleted). Claim 14, which is directed to a “transport platform,” claims different features of the two intermodal transport platform embodiments disclosed in the ’647 patent’s Specification. As noted above, however, Petitioner has not persuaded us that the two disclosed embodiments of an intermodal transport platform include different embodiments of the recited “stacking block.”

Referring to the stacking blocks of the second embodiment, Petitioner notes that “the stacking blocks are mounted to the first brace and move together with that brace,” as recited in challenged claim 14. Rehearing Req. 6. According to Petitioner, braces 210 of that embodiment “must receive the load of any items stacked atop, such as another platform, because the stacking blocks [216] are mounted to the braces away from pin 290,” as shown in Figures 17-19 and 21A. *Id.* at 6. A review of Figures 17-19 and 21A, however, shows that stacking blocks 216 comport with our interpretation of “stacking blocks.” Consequently, we do not find Petitioner’s argument to be persuasive.

Accordingly, Petitioner has not shown that we abused our discretion in interpreting the claimed “stacking blocks.” *See* 37 C.F.R. § 42.71(c). Moreover, Petitioner does not argue that we erred in applying this interpretation to find that “Petitioner has not demonstrated a reasonable likelihood that any of the five

asserted anticipation references discloses ‘a stacking bock mounted to each first brace’ or that any of the six asserted obviousness combinations teaches or suggests ‘a stacking bock mounted to each first brace.’” Decision 10.

Petitioner further argues that “[t]he Decision also misapplied the law of obviousness, by holding that the reference to be modified, in this case GB ’014, must itself teach the missing in this case ‘stacking blocks’ that meet the Board’s construction.” Rehearing Req. 1-2. Petitioner misinterprets our Decision. In addition to finding that Petitioner had not asserted a reference that teaches the recited “stacking block” that could be combined with GB ’014 (Decision 20), we addressed Petitioner’s argument that GB ’014 itself illustrates a “stacking block.” Decision 16-17 (citing Pet. 25). In its request for rehearing, Petitioner contends that “[b]ecause the ’647 patent specification concedes that stacking points at the 40-foot points are ‘industry standard,’ a person of skill would have a motivation to add them to GB ’014.” Rehearing Req. 2. Petitioner does not indicate where in its Petition it made this argument. To the extent that this is a new argument, it may not be raised properly for the first time in a request for rehearing. In any event, even accepting the industry standard of placing stacking points (e.g., the recited “stacking block”) at a particular location, the 40-foot points, on an intermodal transport platform, Petitioner has not established that the prior art taught or suggested the recited “stacking block,” as interpreted by us in light of the ’647 patent’s Specification.

In consideration of the foregoing, it is hereby ORDERED that Petitioner’s request for rehearing is *denied*.

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PETITIONER:

R. Blake Johnston
patentschgo@dlapiper.com

PATENT OWNER:

Thomas McDonough
tmcdonough@ngelaw.com

Mike Turner
mturner@ngelaw.com