

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GUANGDONG XINBAO ELECTRICAL APPLIANCES
HOLDINGS CO., LTD.,
Petitioner,

v.

ADRIAN RIVERA,
Patent Owner.

Case IPR2014-00042
Patent 8,291,812 B2

Before FRANCISCO C. PRATS, JOSIAH C. COCKS, and
JACQUELINE WRIGHT BONILLA, *Administrative Patent Judges*.

BONILLA, *Administrative Patent Judge*.

DECISION
Request for Rehearing
37 C.F.R. § 42.71(d)

I. INTRODUCTION

Patent Owner, Adrian Rivera (“Patent Owner”), filed a Request for Rehearing (Paper 51, “Req. Reh’g” or “Request”)¹ of our Final Decision (Paper 50, “Final Dec.”), holding that Petitioner has demonstrated by a preponderance of the evidence that claim 23 of U.S. Patent No. 8,291,812 B2 (Ex. 1001, “the ’812 patent”) is unpatentable as anticipated by Zhao² under 35 U.S.C. § 102. In its Request, Patent Owner contends that we abused our discretion in our claim construction and anticipation analysis because we overlooked evidence, or lack of evidence, in the record. For the reasons discussed below, we deny Patent Owner’s Request for Rehearing.

II. ANALYSIS

In a request for rehearing, a dissatisfied party “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” 37 C.F.R. § 42.71(d).

In its Request, Patent Owner argues that we overlooked evidence, including testimony by experts for both parties, regarding “the qualifications of one of ordinary skill, which qualifications were beyond that of a layperson.” Req. Reh’g 2–5 (citing Phillips Decl., Ex. 2001 ¶¶ 12–13; Slocum Decl., Ex.1020 ¶ 9; Slocum Dep., Ex. 2002, 40:11–41:1). Patent Owner contends that we overlooked that evidence and incorrectly found that the level of one of ordinary skill was that of a layperson. *Id.* (citing Final Dec. 23).

¹ “*Rehearing* means reconsideration.” 37 C.F.R. § 42.2.

² Zhao, CN Patent Appl. No. ZL 200520143365.6, published Dec. 27, 2006 (“Zhao”) (Ex. 1003) (English translation Ex. 1004).

The portion of our Final Decision that Petitioner cites in support of its contentions in this regard relates to Patent Owner’s Motion to Exclude a Declaration by Petitioner’s expert, Dr. Alexander Slocum (Ex. 1021), relied upon by Petitioner in its Reply to Patent Owner’s Response. Final Dec. 21–23; Paper 32, “Mot. to Exclude,” 2. In its Motion to Exclude, Patent Owner contends that Petitioner inappropriately cited Dr. Slocum’s testimony for the first time in its Reply. Mot. to Exclude 2–3, 10. Without that testimony from Dr. Slocum, according to Patent Owner, the Petition lacks expert testimony as to how a person of ordinary skill would have interpreted Zhao. *Id.* at 2–3, 6–7.

In relation to that Motion to Exclude, our Final Decision explains that testimony from a technical expert is not a prerequisite for establishing unpatentability by a preponderance of the evidence. Final Dec. 22 (citing *U.S. Bancorp v. Retirement Capital Access Management Co.*, CBM2013-00014, slip op. at 18–19 (PTAB Aug. 22, 2014) (Paper 33); *Perfect Web Techs., Inc. v. InfoUSA, Inc.*, 587 F.3d 1324, 1329 (Fed. Cir. 2009). We further explain that Zhao describes a “relatively straightforward and easily understandable technology regarding a coffee holder and coffee maker.” Final Dec. 23. Thus, under the particular facts of the current case, and in view of our claim construction, Petitioner provided sufficient explanation and evidence—relying on Zhao itself as evidence—as to why Zhao anticipates claim 23, without the need for expert testimony evidence from Petitioner. *Id.*

As such, we did not rely upon Dr. Slocum’s Declaration when addressing Petitioner’s arguments regarding anticipation by Zhao. Thus, to the extent we “ignored” any evidence, as Patent Owner contends (Req. Reh’g 6), we disregarded certain expert testimony evidence provided by Petitioner, not Patent Owner.

Patent Owner does not establish that our Final Decision ignores, overlooks, or misapprehends any testimony evidence provided by Patent Owner's own expert, Mr. Paul Phillips. Req. Reh'g 2–8. The Final Decision clearly indicates that we considered the Phillips Declaration (Ex. 2001). *See, e.g.*, Final Dec. 6–8, 12–13, 18–19 (citing Ex. 2001 ¶¶ 20, 27–32, 34, 40). Rather, Patent Owner's contentions assume that if we consider such evidence, and particularly the portions of the Phillips Declaration discussing the level of ordinary skill in the art (Ex. 2001 ¶¶ 12–13), we necessarily must construe claim terms as Patent Owner and its expert contend, and also necessarily find that Zhao does not anticipate claim 23, as Patent Owner and its expert likewise contend. Req. Reh'g 8–15.

As discussed in our Final Decision, the parties did not dispute during trial that “tamper” meant a device “used to distribute and compress ground coffee.” Final Dec. 6 (citing Pet. 13–14; PO Resp. 10–11). Patent Owner further argued, however, relying on the Phillips Declaration, that “tamper” also meant compressing coffee “before water is applied to the coffee,” and without “constraining [the coffee] so that it does not float.” Final Dec. 6–7 (citing PO Resp. 10–11; Ex. 2001 ¶¶ 27–29).

In his Declaration, Mr. Phillips provided his own definition of “tamper” based on a definition of that term provided in the Petition (Ex. 2001 ¶ 27), as well as what is stated in “*Coffee: A Guide to Buying, Brewing, and Enjoying*, 5th edition, by Kenneth Davids” (*id.* at ¶ 28). We found nothing in the Petition, claim 23, the Specification of the '812 patent, or the cited passage in the Davids article, however, that led us to define a “tamper” to exclude something that pressed coffee so that it did not float in water, as Patent Owner and Mr. Phillips proposed. As noted in our Final Decision, the broadest reasonable construction of “tamper” in

light of the Specification of the '812 patent does not support Patent Owner and Mr. Phillips's more narrow reading. Final Dec. 6–7.

As part of our claim construction analysis, we noted that a “dictionary definition provided by Petitioner for the word ‘compress,’ i.e., to ‘press or squeeze together,’ is reasonable and consistent with use of the term ‘tamper’ in the Specification.” *Id.* at 7 (citing Petitioner Reply, Paper 27, 3). In its Request, Patent Owner argues that we inappropriately relied on that definition “based solely on an argument from Petitioner’s counsel on what the dictionary said,” and a dictionary definition published two years after the filing date of '812 patent application. Req. Reh’g 9–12.

Notably, Patent Owner does not suggest in its Request, nor point to evidence indicating, that the definition of “compress” discussed in our Final Decision is incorrect. *Id.* In addition, even assuming we consider Petitioner’s definition of “compress” to be attorney argument, we remain persuaded that the definition is reasonable and consistent with the ordinary meaning of the word.

Patent Owner’s contentions regarding the dictionary definition of “compress” do not indicate that we misapprehended or overlooked any argument or evidence when defining the claim term “tamper” in view of the Specification, i.e., as an “element that compresses, i.e., presses or squeezes together, coffee inside the claimed coffee holder.” Final Dec. 7. We did not rely on Petitioner’s definition of “compress” when declining to limit “tamper” as Patent Owner and its expert suggested. Req. Reh’g 12. Rather, we gave the term “tamper” its broadest reasonable interpretation in view of language in claim 23, itself, and the Specification at issue. Final Dec. 6–7.

In its Request, Patent Owner also argues that “no factual basis” supports our finding that Zhao anticipates claim 23 in view of a proper construction of the claim phrase “engagable with a coffee maker.” Req. Reh’g 12–15.

As discussed in our Final Decision, we construed “engagable” to mean that “the coffee holder is capable of interacting or interlocking with the coffee maker, *in agreement with contentions of both parties*, and consistent with the Specification at issue.” Final Dec. 8–9 (emphasis added); *see also* Patent Owner Response (“PO Resp.”), Paper 20, 13 (stating that “[o]ne of ordinary skill in the art reading the patent, would understand ‘engage’ to involve some sort of interaction or interlocking between the coffee maker and the coffee holder.”). In addition, we construed “coffee maker” to mean “something that makes coffee,” indicating that nothing in the Specification nor any other evidence of record directs us to a more narrow construction. Final Dec. 8–9 (citing Ex. 1001, 8:24–40 (stating “coffee maker 10 provides a flow of hot water through coffee grounds to produce a coffee drink”))).

Regarding its positions pertaining to “engagable with a coffee maker” and whether “dripolators” work with tamped coffee, Patent Owner presents the same arguments and evidence, and implicitly relies on its own more narrow definition of “engagable with a coffee maker,” as previously presented in its Patent Owner Response. Req. Reh’g 12–15; PO Resp. 14–16 (citing Ex. 2001 ¶¶ 32–34), *see id.* at 15 (stating that “[p]lacing a strainer over a carafe does not constitute engaging and disengaging a coffee holder with a coffee maker”).

We considered and addressed all of those arguments, evidence, and Patent Owner’s proposed claim construction in our Final Decision. Final Dec. 8–9, 13–15. For example, we explained that a “coffee holder is ‘engagable’ with a coffee maker even if the holder is capable of being placed on top of, or within, a portion

of the coffee maker, as long as that placement allows the holder and coffee maker to work and interact together.” *Id.* at 9. We further explained that the construction is consistent with descriptions in the Specification. *Id.* (citing Ex.1001, 1:52–55 (stating “[a]fter tamping, the coffee holder is places [sic] into a suitable coffee maker”), 2:7–9 (stating that “FIG. 2 is a side view of the coffee maker with an open lid allowing placement of a coffee holder according to the present invention inside the coffee maker”), 8:41–44).

Patent Owner’s contentions in its Request regarding “engagable with a coffee maker” and “dripolators” do not indicate that we misapprehended or overlooked arguments or evidence presented by Patent Owner. In its Request, Patent Owner does not address or discuss the Specification of the ’812 patent. Instead, Patent Owner assumes that we must limit “tamper,” “tamping” and “coffee maker” in claim 23 to refer to “tamped coffee [that] is used in brewing systems where the coffee maker supplies pressurized water,” solely based on testimony in the Phillips Declaration. Req. Reh’g 13–14 (citing Ex. 2001 ¶¶ 29, 32–34).

Our Final Decision expressly discusses evidence, including the ’812 patent Specification (Final Dec. 8–9) and deposition testimony of Mr. Phillips (*id.* at 14). For example, as noted in our Final Decision, Mr. Phillips’ own testimony provides evidence that a “common dripolator,” as described in Zhao, is a coffee maker. *Id.* at 14 (citing Ex. 1016, 48:12–49:15 (stating that dripolator refers to “drip-type coffee makers”)).

For the reasons discussed above, we are not persuaded that we misapprehended or overlooked evidence, such as the Phillips Declaration, including such testimony regarding qualifications of one of ordinary skill in the art. Nor are we persuaded that consideration of such evidence dictates that we alter our

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Final Decision in relation to claim construction or our determination regarding anticipation of claim 23 by Zhao.

III. CONCLUSION

We *deny* Patent Owner's Request for Rehearing.

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