

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NORMAN INTERNATIONAL, INC.,
Petitioner,

v.

ANDREW J. TOTI TESTAMENTARY TRUST,
RUSSELL L. HINKLEY, SR.
(CO-TRUSTEE), and ROBERT F. MILLER (CO-TRUSTEE),
Patent Owner.

Case IPR2014-00283
Patent 6,283,192 B1

Before TONI. R. SCHEINER, LINDA M. GAUDETTE, and
JACQUELINE WRIGHT BONILLA, *Administrative Patent Judges*.

SCHEINER, *Administrative Patent Judge*.

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

I. INTRODUCTION

Norman International, Inc. (“Petitioner”) filed a Request for Rehearing (Paper 53, “Req. Reh’g”) of our Final Written Decision (Paper 52, “Dec.”), wherein we declined to hold claim 26 of U.S. Patent No. 6,283,192 B1 (Ex. 1001, the ’192 patent) unpatentable as obvious over Tachikawa and Todd. Andrew J. Toti Testamentary Trust, Russell L. Hinckley, Sr. (Co-Trustee), and Robert F. Miller (Co-Trustee) (collectively, “Patent Owner”) filed an Opposition to Petitioner’s Request for Rehearing (Paper 55, “Opp.”). For the reasons that follow, we deny Petitioner’s Request for Rehearing.

II. STANDARD OF REVIEW

When rehearing a final written decision on a petition for *inter partes* review, the Board “will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c). “An abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, on factual findings that are not supported by substantial evidence, or represents an unreasonable judgment in weighing relevant factors.” *Lacavera v. Dudas*, 441 F.3d 1380, 1383 (Fed. Cir. 2006) (citing *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir.2005)).

The party requesting rehearing has the burden of showing the decision should be modified, and “[t]he request 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).

III. ANALYSIS

Claim 26 is directed to

26. A window cover system comprising: an extendible window cover; a housing; at least one lift cord attached to the cover and wrapped around a pulley mounted to the housing for extending and retracting the extendible cover; *a plurality of spring drives*, connected to the pulley for assisting the extending and retracting of the cover; the individual ones of *the spring drives comprising a first, storage spool, a second, output spool* operatively connected to the pulley, and a flat spring wound on and between the first and second spools; *and a first shaft on which the output spool is mounted and a second shaft on which the pulley is mounted, the two shafts being oriented transverse to one another*; and a pair of meshed bevel gears mounted one on each shaft and connecting the shafts for rotation together.

Ex. 1001, 27:59–28:5 (emphases added).

Petitioner contends we misapprehended the obviousness standard under 35 U.S.C. § 103, as well as the preponderance of the evidence standard, in determining Petitioner had failed to establish that claim 26 would have been obvious over Tachikawa and Todd. Petitioner contends that it met its burden to demonstrate obviousness by a preponderance of the evidence by pointing to elements of both references, mapping them to elements of claim 26, and arguing that it would have been obvious to modify Tachikawa’s window cover system with a plurality of spring drives

“depending on the weight and size of a window cover.” Req. Reh’g 6 (citing Dec. 24; Pet. 31–36; Paper 32, 5–10).

Petitioner further contends “[i]n quoting the Petition, the Board omits Petitioner’s express statement that the plurality of spring drives was ‘demonstrated by Todd’” (Req. Reh’g 6), and “therefore erred by ‘failing to take account of the inferences and creative steps, or even routine steps, that an inventor would employ’ in adding an additional spring drive to Tachikawa as taught by Todd” (*id.*).

We are not persuaded that we misapprehended or overlooked any evidence or argument presented in the Petition. Nor are we persuaded that we misapprehended either the preponderance of the evidence standard or the obviousness standard under 35 U.S.C. § 103.

In the Petition (Paper 2, “Pet.”), Petitioner asserted that

Tachikawa discloses a window cover system with a Vernetian [sic] blinds roll-up device using a spring drive. Window cover systems using two or more spring 20 derives [sic] were well known before the earliest filing date of the 192 Patent. For example, Todd demonstrates that it was well known to a person of ordinary skill in the art at the time of the invention to use multiple spring drives for assisting the extending and retracting of a window cover. Thus, it would have been obvious to modify Tachikawa with a plurality of spring drives depending on the weight and size of a window cover as demonstrated by Todd.

Pet. 31–32.

In declining to hold claim 26 of the ’192 patent unpatentable, we determined that even if Petitioner had established one of ordinary skill in the

art would have had a reason to provide a window cover system with multiple spring drives to accommodate a heavier window covering, Petitioner failed to provide articulated reasoning with some rational underpinning to support the conclusion that it would have been obvious to configure the system in the manner required by claim 26. Dec. 25.

As noted by Patent Owner, Tachikawa discloses two embodiments for mounting a spring drive. In one embodiment (depicted in Figures 5 and 6 of Tachikawa), the spring drive is mounted such that operating shaft 2 is connected directly to—and through—the drum of spring drive 14. Paper 23 (“PO Resp.”) 38 (citing Ex. 2006 ¶ 93). When the spring drive is oriented in this direction, operating shaft 2 also is connected directly to a hole in support plate 12 mounted inside the housing, and operating shaft 2 is similarly connected directly to—and through—pulley 3, which lifts and lowers the cover by operation of the lift tapes. *Id.* (citing Ex. 1002, 1:22–30, 2:15–22).

As further noted by Patent Owner (PO Resp. 38–39), Petitioner did not rely on that embodiment of Tachikawa to meet the requirement of claim 26 for “a first shaft on which the output spool is mounted and a second shaft on which the pulley is mounted, the two shafts being oriented transverse to one another.” Rather, to meet that requirement, Petitioner relied on another embodiment, depicted in Figures 3 and 4 of Tachikawa (“the “transverse embodiment”). In that embodiment, according to Petitioner, Tachikawa discloses “output spool 14 mounted to shaft 9, which corresponds to the first shaft of claim 26” (Pet. 35:6–7 (citing Ex. 1002, Fig. 4)), and “a second shaft

2 on which the pulley 3 is mounted” (*id.* at 35:10–11 (citing Ex. 1002, Figs. 3, 4)), wherein “[s]haft 9 and 2 are transversely oriented to each other” (*id.* at 35:11–12 (citing Ex. 1002, Fig. 3)).

To meet the requirement for “a plurality of spring drives,” Petitioner turned to Todd (Ex. 1003). Todd discloses a window shade with horizontal shaft 30, which supports the shade. Ex. 1003, 4:20–21; Fig. 3. Todd teaches that spring assembly 26 is attached to shaft 30 and exerts a force on shaft 30, which causes shaft 30 to rotate, ultimately raising the shade. Todd additionally teaches that “additional force, [e.g.,] to raise a longer shade, may be applied to shaft 30 merely by increasing the number of spring assemblies 26 attached thereto. Thus the axial dimension, rather than the diametrical dimension, increases with increased spring capacity.” *Id.* at 5:32–37.

In the Petition, Petitioner merely cited Tachikawa’s disclosure of the transverse embodiment and Todd’s disclosure of a plurality of spring drives, and concluded that “it would have been obvious to modify Tachikawa with a plurality of spring drives depending on the weight and size of a window cover as demonstrated by Todd.” Pet. 32. As Patent Owner pointed out, however, Petitioner “[did] not explain why one of ordinary skill in the art would combine Tachikawa and Todd *in the manner claimed.*” PO Resp. 33 (emphasis added). That is, Petitioner did not explain why one of ordinary skill in the art would have added additional spring drives to the embodiment of Tachikawa, where the spring drive is mounted on a shaft *transverse* to the

shaft supporting the window covering (the transverse embodiment), when Todd teaches that additional drives, if needed, should be added *axially* along the shaft that supports the shade.

It is not enough for Petitioner to establish merely that one of ordinary skill in the art would have had a reason to use a plurality of spring drives in a window covering system. Petitioner must also establish that one of ordinary skill in the art would have possessed the requisite knowledge and skills to configure the shafts and spring drives in the manner claimed, would have had reason to configure it in that manner in particular, and would have had a reasonable expectation of success in so doing. Petitioner's conclusory statement, unsupported by evidence, is insufficient to meet this burden.

Accordingly, we decline to modify our Decision declining to hold claim 26 of the '192 patent unpatentable as obvious over Tachikawa and Todd.

IV. CONCLUSION

Having considered Petitioner's Request for Rehearing, we are not persuaded, for the reasons discussed, that our Decision misapprehended or overlooked any point of law or fact advanced in the Petition, such that the Decision can be considered an abuse of discretion.

V. ORDER

For the reasons given, it is hereby ORDERED that Petitioner's Request for Rehearing is *denied*.

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