

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TRW AUTOMOTIVE US LLC,  
Petitioner,

v.

MAGNA ELECTRONICS INC.,  
Patent Owner.

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Case IPR2014-00293  
Patent 8,314,689 B2

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Before JUSTIN T. ARBES, BART A. GERSTENBLITH, and  
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

IPPOLITO, *Administrative Patent Judge*.

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

## I. INTRODUCTION

TRW Automotive US LLC filed a Request for Rehearing (Paper 20, “Req. Reh’g”) of the Decision Denying Institution (Paper 19, “Decision”), dated July 1, 2014. The Decision denied institution of *inter partes* review of all claims involved in the Petition (Paper 17, “Pet.”) namely claims 1–3, 5–10, 12, 15–25, and 27–31 of U.S. Patent No. 8,314,689 B2 (“the ’689 patent”). Petitioner requests reconsideration of the denial of institution and contends we abused our discretion in denying institution of *inter partes* review of claims 1–3, 5–10, 12, 15–25, and 27–31. For the reasons stated below, Petitioner’s request 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.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted). The request must identify, specifically, all matters the party believes the Board misapprehended or overlooked. 37 C.F.R. § 42.71(d).

## III. DISCUSSION

### A. Claims 1–3, 5–10, 12, 20–22, 24, and 28–31 – Obviousness Over Bottesch, Yanagawa, Vellacott, and Zheng

#### 1. *Petitioner’s Arguments Regarding the Combination of References Relied Upon for this Ground*

Petitioner contends that we abused our discretion in finding that the Petition failed to explain sufficiently the specific combination of references Petitioner relies upon for this alleged ground of unpatentability. Req. Reh’g 3, 8.

In the Decision, we concluded that the Petition failed to explain the exact combination of teachings, out of the numerous possible combinations of the four references (i.e., Bottesch, Yanagawa, Vellacott, and Zheng), that Petitioner relies upon to render claims 1–3, 5–10, 12, 20–22, 24, and 28–31 unpatentable under this ground. Decision 15, 22. In coming to this conclusion, we observed for claim 1 that the Petition states initially that Bottesch is the primary reference for the CMOS photosensor array limitation recited in claim 1 (Pet. 15), but then concludes that “Bottesch, Yanagawa, and/or Zheng, *all . . .* can be properly modified to utilize the CMOS image sensor taught by Vellacott, as a known equivalent substitution for television or CCD cameras” (*id.* at 28) (emphasis added). This created an ambiguity as to which reference(s) Petitioner proposed would have been modified by Vellacott to meet the first CMOS photosensor array limitation of claim 1. Decision 14–15. The Petition added further ambiguity by citing multiple references for additional photosensor array and control limitations without explaining how one of ordinary skill in the art would have combined the alleged disclosures to satisfy these additional limitations. *See* Pet. 14, 25. Thus, we were left to speculate on the exact combination of references relied upon to teach or suggest multiple limitations recited in the claims at issue, which we declined to do. Decision 14–15, 21–22.

Now, Petitioner asserts that Bottesch is the primary reference and that “[f]or the most part,” Petitioner relies on Yanagawa, Vellacott, and Zheng as secondary references “to illustrate the general state of the art and emphasize the commonality in the prior art of the claimed structure.” Req. Reh’g 3. First, we are not persuaded by this argument because it was not presented in the Petition. For example, Petitioner argues that for a “control” limitation of claim 1, “portions of Yanagawa, Zheng, and Vellacott . . . *merely emphasize the structure similarities*”

in all of the applied references. Req. Reh’g 5 (emphasis added). However, the Petition states that “*all of the applied references* disclose a control having an image processor for analyzing image data captured by a photosensor array, or a camera utilized for a purpose identical to a vehicular photosensor array” (Pet. 25 (emphasis added)), but does not explain that this evidence is “merely to emphasize structure similarities.” *Id.* at 24–25. Similarly, we also are not persuaded by Petitioner’s argument that Vellacott and Zheng were relied upon “merely to emphasize the abundance of prior art which met the ‘more than’ limitation” of claim 1 because this was not presented in the Petition. Req. Reh’g 5.

Second, we are not persuaded that Petitioner’s alleged use of secondary references to “illustrate the general state of the art and emphasize the commonality in the prior art” (Req. Reh’g 3) identifies sufficiently the exact combination of references Petitioner relies upon to show obviousness. Even assuming that a claimed structure may be commonly disclosed in Bottesch, Yanagawa, Zheng, and Vellacott, this commonality only indicates that Petitioner could rely on one or more of the references to teach or suggest the claimed structure. It is incumbent upon the Petitioner to identify, in the Petition, the specific reference or combination of references it relies upon for its challenge. Although the Petition states that “Bottesch, **alone or in combination with** the other applied references . . . renders the challenged claims obvious” (Req. Reh’g 3 (quoting Pet. 15)), the Petition fails to indicate what specific combination of disclosures in what references allegedly teach or suggest the challenged claims.

A petition for *inter partes* review must contain “[a] full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence,” and must identify specifically “[h]ow the construed claim is unpatentable,” including identification of “where each element of the claim is

found in the prior art patents or printed publications relied upon.” 37 C.F.R. §§ 42.22(a)(2), 42.104(b)(4), (5). Here, the Petition fails to satisfy this requirement. Nor will we attempt to fit evidence together into a coherent explanation that supports an argument that demonstrates a reasonable likelihood that Petitioner would prevail. *See Stampa v. Jackson*, 78 USPQ2d 1567, 1571 (BPAI 2005) (“Appellant’s Brief is at best an invitation to the court to scour the record, research any legal theory that comes to mind, and serve generally as an advocate for appellant. We decline the invitation.” (quoting *Ernst Haas Studio, Inc. v. Palm Press, Inc.*, 164 F.3d 110, 111–12 (2d Cir. 1999))).

Additionally, we disagree with Petitioner’s position that our Decision assumes Yanagawa, Vellacott, and Zheng are necessary references for claim 1. Req. Reh’g 6. To the contrary, we declined to make such assumptions. *See* Decision 14–15 (“[W]e decline to speculate as to how four references teaching different systems could apply to . . . claim 1.”). Thus, we are not persuaded by this argument.

## 2. *Petitioner’s Arguments Regarding the “More Than” Limitation*

In the Decision, we further denied Petitioner’s challenge of claim 1 and claims 2–21, which depend from claim 1, because the Petition failed to show that the relied upon portions of Bottesch, Vellacott, and Zheng teach the following limitation of claim 1:

said control analyzes image data captured by photosensor elements where an object exterior of the equipped vehicle is determined to be present more than said control analyzes image data captured by other photosensor elements where the determined object is not present.

Ex. 1002, col. 45, ll. 57–62; Decision 18–20. We construed this limitation to require that the control perform the recited analysis *after* an object exterior of the equipped vehicle is *determined to be present*. *Id.* at 8–10.

In the Rehearing Request, Petitioner contends Bottesch satisfies this limitation because it illustrates monitoring segmented areas of a photocell array. Req. Reh’g 6. Even assuming that Bottesch provides this teaching, which we considered in the Decision, we concluded that this disclosure does not teach or suggest a control that performs the recited analysis of claim 1 *after* determining the presence of an object. Decision 19–20. Petitioner has not persuaded us otherwise.

Petitioner further argues that the Zheng passages cited in the Petition disclose the “more than” limitation. Req. Reh’g 6–8. Specifically, the Petition directs us to Zheng’s detection process, which “segment[s] a color image from a forward facing vehicle CCD camera ‘into some regions,’ and then mark[s] some of the segmented regions from the CCD camera image as ‘region[s] of interest (ROI).’” Pet. 26 (quoting Ex. 1007-010, right col.). Now, in its Request for Rehearing, Petitioner contends that the Petition relied on Zheng’s recognition process, also disclosed in the right column on page 10. Req. Reh’g 7.

We are not persuaded by these arguments because Petitioner did not make them in the Petition. Pet. 26. A rehearing request is not a supplemental petition. “The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.” 37 C.F.R. § 42.204(b)(5). We could not have misapprehended or overlooked an argument that was not made in the Petition. Thus, we are not persuaded that we abused our discretion on this basis.

*B. Claims 15–19, 23, 25, and 27*

For grounds pertaining to claims 15–19, 23, 25, and 27, Petitioner incorporates arguments discussed above with respect to independent claims 1 and 22. Req. Reh’g 9. Petitioner adds that the Petition clearly stated its challenges based on Mietzler, Venturello, and/or Tadashi. *Id.* at 9–10. For the reasons

discussed above for independent claims 1 and 22, we are not persuaded that we abused our discretion in concluding that Petitioner has not shown a reasonable likelihood that it would prevail on its challenges to claims 15–19, 23, 25, and 27. *See* Decision 23–26.

*C. Petitioner’s Arguments Regarding a Reason to Combine*

In the Decision, we concluded that the Petition’s analysis was silent on any reason for combining Bottesch, Yanagawa, Zheng, and/or Vellacott for the limitations of a “control comprising an image processor, said image processor processing image data captured by said photosensor array” and “said control analyzes image data captured by photosensor elements where an object exterior of the equipped vehicle is determined to be present more than said control analyzes image data captured by other photosensor elements where the determined object is not present,” as recited in claim 1. Decision 16–17. We did not find the Petition’s conclusory statement of equivalent substitution persuasive. *Id.*

In its Request for Rehearing, Petitioner contends that we abused our discretion because “[t]he references themselves teach to look to other vehicular vision art for interchangeable components, including features disclosed in Yanagawa, Zheng, and Vellacott.” Req. Reh’g 12. Petitioner asserts that (1) Bottesch expressly states that “[a]ny other photo sensitive device may also be used, such as CCD’s”; (2) Yanagawa describes a vehicle recognition device capable of automatically controlling headlights, which is different from the other applied references “only in the choice of which vehicle system to control”; (3) Vellacott teaches its sensor/imputer provides a single integrated architecture; and (4) Zheng teaches a forward-facing vehicular vision system using a CCD. *Id.* at 11–12 (citing Pet. 17–19).

We are not persuaded because these arguments were not presented in the Petition for the “control” limitations. For example, we agree that Bottesch states that any *photo sensitive device*, such as CCDs, may be used with its vehicle system (Pet. 17); however, we are unpersuaded that Petitioner presented this reasoning for the combination of Bottesch with other references as teaching the specific “control” limitations. Pet. 24–25. As we noted, the Petition’s analysis for a “control comprising an image processor, said image processor processing image data captured by said photosensor array” does not include any reason for combining the applied references in the manner asserted. Decision 16; Pet. 24–25. Although Petitioner may have intended for us to mix and match features among those disclosed in the references and rely on other portions of the Petition for a reason to combine, we were unable to discern such an intent from the wording and structure of pages 24–28 of the Petition.

Additionally, as we explained in the Decision, we were not persuaded by Petitioner’s assertion that it would have been a predictable solution or an obvious design choice to turn Vellacott’s camera around to perform the same as the camera did facing rearward. Decision 17–18. Now, Petitioner contends that the Assignee of the ’689 patent, Donnelly Corp., was a customer for the Vellacott device. Req. Reh’g 12 n. 4. Nonetheless, we are unpersuaded that the identity of Donnelly Corp. as a customer of Vellacott’s imputer establishes that the Vellacott imputer would perform the same as the system disclosed in the ’689 patent or that that fact somehow amounts to a reason why a person of ordinary skill in the art would have modified Vellacott and combined the references in the manner asserted by Petitioner.

*D. Petitioner's Arguments Regarding the Declaration of Dr. Miller*

Petitioner contends the Decision constitutes an abuse of discretion because it “summarily dismisses the expert declaration of Dr. Miller.” Req. Reh’g 12.

Petitioner further asserts that the Petition need “offer nothing more” than Dr. Miller’s suggestion that “the claimed invention is nothing more than a combination of familiar elements doing what one in the art would expect them to do.” *Id.* at 14.

We did not overlook the testimony of Dr. Miller cited by Petitioner in the Petition. To the contrary, we considered the evidence and argument presented in the Petition, but found that the cited portions of Dr. Miller’s declaration repeated the same unpersuasive arguments and statements presented in the Petition. Decision 17 n.4. Thus, Petitioner’s contention is merely a disagreement with our decision, which is not a sufficient basis on which to request rehearing.

IV. ORDER

Accordingly, it is hereby ORDERED that Petitioner’s request for rehearing is *denied*.

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