

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NHK SEATING OF AMERICA, INC.,
Petitioner,

v.

LEAR CORPORATION,
Patent Owner.

Case IPR2014-00925
Patent 8,434,818 B2

Before RICHARD E. RICE, MITCHELL G. WEATHERLY, and
CARL M. DeFRANCO, *Administrative Patent Judges*.

WEATHERLY, *Administrative Patent Judge*.

DECISION
Denying Request for Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

A. BACKGROUND

NHK Seating of America, Inc. (“NHK”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–4 of U.S. Patent No. 8,434,818 B2 (Ex. 1001, “the ’818 patent”). NHK supported the Petition with a declaration from Richard W. Kent, PhD (Ex. 1009). Lear Corporation

(“Lear”) timely filed a Preliminary Response. Paper 9 (“Prelim. Resp.”). On December 15, 2014, based on the record before us at the time, we instituted an *inter partes* review of claims 1–4, Paper 10 at 12 (“Institution Decision” or “Dec.”), on the following grounds:

Reference(s)	Basis	Claims
German Patent Publication DE 102 32 017, (“DE ’017”) (Ex. 1003 with certified translation at Ex. 1004) and German Patent Publication DE 100 54 826 (“DE ’826”) (Ex. 1005 with certified translation at Ex. 1006).	§ 103	1–4
DE ’017, DE ’826, and German Patent Publication DE 100 49 961 (“DE ’961”) (Ex. 1007 with certified translation at Ex. 1008).	§ 103	1–4

After we instituted review, Lear filed a Patent Owner Response in opposition to the Petition (Paper 14, “Resp.”) that was supported by the declaration of David C. Viano, PhD (Ex. 2008). NHK filed a Reply in support of the Petition (Paper 16, “Reply”) that was supported by an additional declaration from Dr. Kent (Ex. 1013). With our prior authorization, Lear filed a Surreply in response to the Reply (Paper 20, “Surreply”) that was supported by an additional declaration from Dr. Viano (Ex. 2019). We heard oral argument on September 9, 2015. A transcript is entered as Paper 37 (“Tr.”).

We entered our Final Written Decision on December 15, 2015, Paper 38 (“Final Written Decision” or “Final Dec.”), in which we concluded that claims 1, 3, and 4 were unpatentable but claim 2 was not unpatentable. Final Dec. 26. NHK filed a timely Request for Rehearing in which it asks that we reconsider and withdraw our Final Written Decision as it relates to claim 2. Paper 39 (“Reh’g Req.” or “Request for Rehearing”). We authorized further

briefing from the parties on the issues raised in the Request for Rehearing in the form of an opposition by Lear (Paper 41, “Reh’g Opp.”) and a reply in support (Paper 42, “Reh’g Reply”). Paper 40. For the reasons that follow, we deny the Request for Rehearing.

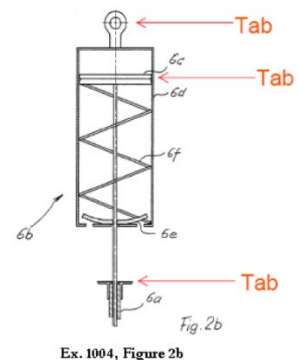
B. STANDARD FOR RECONSIDERATION

The party filing a request for rehearing of a final written decision has the burden of showing a decision should be modified, and the request for rehearing must specifically identify all matters the party believes the Board misapprehended or overlooked and the place where each matter was previously addressed in its papers. 37 C.F.R. § 42.71(d). Therefore, NHK bears the burden of establishing that we misapprehended or overlooked the matters that it requests that we review.

II. ANALYSIS

Claim 2 depends from claim 1 and further recites “the active head restraint system further comprises at least one tab connecting the at least one transfer member to the upper armature.” Ex. 1001, 12:21–24. In the Petition, with respect to its challenge to claim 2 as being unpatentable as obvious over DE ’826 and DE ’017, NHK identified tension cable 19 of DE ’826 as the claimed “transfer member” and cranked bar 2c of DE ’017 as the claimed “upper armature.” Pet. 30.

In the Reply, NHK shifted its position, identifying cable 6a of DE ’017 as the “transfer member” and support structure 2 of DE ’017 as the “upper armature.” Reply 23. NHK identified three structures from DE ’017 as the claimed tab, which are illustrated in the annotated version of Figure 2b of DE ’017 that is reproduced at right. *Id.* at 22.



In its Rehearing Request, NHK argues that we overlooked evidence that the uppermost structure shown in NHK’s annotated figure, which Dr. Viano calls an “eyebolt,” Ex. 2019 ¶ 22, constitutes the tab of claim 2. Reh’g Req. 5–7. Specifically, NHK contends that we overlooked Dr. Viano’s testimony that the eyebolt shown in DE ’017 “is still a ‘structure that extends outward,’” which is all that is required of claim 2. *Id.* at 5. NHK contends that it identified testimony from Drs. Kent and Viano to support its position. *Id.* at 6–7 (citing Ex. 1012, 10:6–15, 12:6–8, 14:13–15:6, 18:24–19:18; Ex. 1013 ¶¶ 42–46; Ex. 1014, 9:4–7; Ex. 2019 ¶ 7).

NHK’s argument for rehearing is unpersuasive even if we were to agree with NHK’s argument that the eyebolt is a “tab.” At trial, NHK failed to establish that the eyebolt extends from cable 6a of DE ’017, which is the structure that NHK identified in its Reply as the claimed transfer member. Reply 23.¹ NHK also failed to establish that the eyebolt extends from any structure that NHK equated to the claimed upper armature.

In our Final Written Decision, we determined that claim 2 requires that the claimed tab must “extend outward from one or the other of the transfer member and the upper armature.” Final Dec. 23. Because NHK

¹ NHK shifted positions again in its Reply in Support of its Request for Rehearing regarding the element in the prior art that constitutes the claimed transfer member when it identified “bowden cable arrangement 6” of DE ’017 as the transfer member. Reh’g Reply 2. A Request for Rehearing is not a proper vehicle for introducing argument or evidence that was not presented at trial. See 37 C.F.R. § 42.71(d) (limiting requests for rehearing to those matters that were “previously addressed in a motion, an opposition, or a reply” during trial). Accordingly, we do not consider NHK’s new argument properly to be before us.

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failed at trial to demonstrate how the eyebolt meets this requirement of claim 2, we deny the Request for Rehearing.

III. ORDER

For the reasons given, it is

ORDERED that NHK's Request for Rehearing is *denied*.

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