

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PLANT SCIENCE, INC. and ENVIRO GRANULATION, LTD.,
Petitioners,

v.

THE ANDERSONS, INC.,
Patent Owner.

Case IPR2014-00941
Patent 8,574,631 B2

Before TONI R. SCHEINER, RAMA G. ELLURU, and
JO-ANNE M. KOKOSKI, *Administrative Patent Judges*.

KOKOSKI, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING
37 C.F.R. § 42.71

On January 16, 2015, Plant Science, Inc. and Enviro Granulation, Ltd. (collectively, “Petitioners”) filed a Request for Rehearing (Paper 10, “Req. Reh’g”) of our Decision Denying Institution of *Inter Partes* Review (Paper 9, “Decision”). Petitioners’ basis for requesting rehearing is its contention that the Board misunderstood or misapplied arguments and evidence demonstrating that claims 1–22 of U.S. Patent No. 8,574,631 B2 (“the ’631 patent”) are unpatentable over the cited prior art. Req. Reh’g 1–2, 8.

Specifically, Petitioners allege that we overlooked pages 6–17, 22–32, 37–44, and 47–54 of the Petition, which Petitioners contend “set the stage for each Challenge and identify the state of the art and the needs in the art relative to the cited prior art and the aspects claimed in the ’631 patent.” Req. Reh’g 2. According to Petitioners, their anticipation arguments can “be more completely appreciated and obviousness rationales are more fully understood when the Petition is properly considered as a whole.” *Id.* at 8.

We are not persuaded that we overlooked or misunderstood information contained in pages 6–16, 19–31, 36–42, and 47–54 of the Petition. Instead, we considered the evidence and arguments presented in the Petition and deemed them insufficient to establish a reasonable likelihood that at least one of the challenged claims of the ’631 patent is unpatentable. Dec. 6–16. For example, with respect to the anticipation challenge based on Miele, Petitioners allege that we overlooked arguments and evidence that establish that the Miele granulated fertilizer is comprised of the same components, and uses the same granulation method, as the ’631 patent and, therefore, must have the water dispersibility properties claimed in the ’631 patent. Req. Reh’g 12–13. However, we considered Petitioners’ evidence and were not persuaded that Miele inherently describes pellets or

granules that disperse into more than 100 pieces when contacted with water, as is required by every challenged claim. *See* Dec. 12–13 (discussing Petitioners’ arguments supported by evidence presented in pages 42–44 and 47–54 of the Petition). Disagreement with the Board’s analysis and conclusions is not a sufficient basis on which to request rehearing. It is not an abuse of discretion to have made an analysis or conclusion with which a party disagrees.

Moreover, with respect to Petitioners’ obviousness challenges, while pages 6–16, 19–31, 36–42, and 47–54 of the Petition may have included information relevant to the inquiries, Petitioners did not provide sufficient analysis that would constitute articulated reasoning with rational underpinnings as to why one of ordinary skill in the art would combine and modify the prior art as Petitioners allege. Although Petitioners may have intended the Board to comb through the information presented throughout the aforementioned pages, and pick out the pieces that support an “obvious to try” rationale for each asserted prior art combination, we were unable to discern such an intent from the wording and structure of the challenges as presented on pages 16–20, 31–36, and 44–46 of the Petition. We could not have overlooked a detailed analysis or explanation that is not presented. A request for rehearing is not an opportunity to supplement a petition.

Petitioners also contend that we “misunderstood or misapplied the law regarding obviousness by failing to consider” the Sensibaugh Declaration in evaluating the challenges based on or including the Sensibaugh reference. *Req. Reh’g* 14–15. Specifically, Petitioners contend that “[i]t is a misapplication of the law not to consider the information and facts presented by Philip Sensibaugh and his over 29 years of experience in the fertilizer

industry relative to each Challenge.” *Id.* Instead of including a detailed explanation of the challenged claims under each asserted ground in their Petition as is required by our rules (37 C.F.R. §§ 42.22(a)(2), 42.104(b)(4)), however, Petitioners referred to paragraphs in the Sensibaugh Declaration that spanned approximately 9 pages of claim charts and other arguments to support the unpatentability challenges based on Sensibaugh. *See* Dec. 14–15. Our rules state that arguments must not be incorporated by reference from one document into another. 37 C.F.R. § 42.6(a)(3). Because the Petition did not include a detailed explanation of the significance of the cited paragraphs of the Sensibaugh Declaration, and because arguments must not be incorporated by reference from the Sensibaugh Declaration into the Petition, we did not abuse our discretion in denying institution of *inter partes* review on the asserted grounds of unpatentability based on Sensibaugh.

Petitioners’ Request for Rehearing is *denied*.

IPR2014-00941
Patent 8,574,631 B2

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