

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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HAMILTON BEACH BRANDS, INC.,  
Petitioner,

v.

COURTESY PRODUCTS, LLC,  
Patent Owner.

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Case IPR2014-01258  
Patent 7,770,512 B2

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Before GRACE KARAFFA OBERMANN, HYUN J. JUNG, and  
CHRISTOPHER M. KAISER, *Administrative Patent Judges*.

JUNG, *Administrative Patent Judge*.

DECISION  
Motion for Reconsideration  
*37 C.F.R. § 42.71(d)*

## I. INTRODUCTION

In a Motion for Reconsideration (Paper 13, “Mot.”), Hamilton Beach Brands, Inc. (“Petitioner”) requests rehearing and reconsideration of our decision denying institution of an *inter partes* review (Paper 11, “Dec.”) of claims 22–24, 49–51, 54, 55, 65, and 66, of U.S. Patent No. 7,770,512 B2 (Ex. 1001, “the ’512 patent”).

Petitioner does not seek rehearing of our decision to institute *inter partes* review of claims 1, 9–11, 13, 16–21, 25–28, 36, 38, 40, 43–48, 52, 53, 56–64, and 67–73 of the ’512 patent. Mot. 1.

The applicable standard for a request for rehearing of an institution decision is abuse of discretion. 37 C.F.R. § 42.71(c). The requirements are set forth in 37 C.F.R. § 42.71(d), which provides in relevant part:

A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The 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.

For the reasons stated below, Petitioner’s motion is *denied*.

### A. *Decision to Institute*

We determined that Petitioner had not established a reasonable likelihood of prevailing on its assertion that claims 22–24, 49–51, 54, 55, 65, and 66 of the ’512 patent as unpatentable under 35 U.S.C. § 103 over U.S. Patent No. 6,164,191 to Liu, iss. Dec. 26, 2000 (Ex. 1002, “Liu”); U.S. Patent No. 5,840,189 to Sylvan, iss. Nov. 24, 1998 (Ex. 1003, “Sylvan”); and U.S. Patent No. 3,446,624 to Luedtke, iss. May 27, 1969 (Ex. 1004,

“Luedtke”) or over U.S. Patent No. 3,620,155 to Bixby, iss. Nov. 16, 1971 (Ex. 1005, “Bixby”); Sylvan; and Luedtke. Dec. 15–17, 18. Specifically, for claims 22–24 and 49–51, we determined that the Petition failed to explain how the relied upon references teach the limitations and how those same references would be combined. Dec. 12–13, 15. For claims 54, 55, 65, and 66, we agreed with Patent Owner that the Petition fails to explain where limitations are found and improperly incorporates arguments by reference to a Declaration of Alexander H. Slocum (Ex. 1009, “Slocum Declaration”). Dec. 17, 19.

## II. DISCUSSION

For claims 54, 55, 65, and 66, Petitioner asserts that the Petition provides arguments that the structure recited by these claims were rendered obvious by Liu, Sylvan, and Luedtke and that the recited use of these claims was known in the art and, thus, is not entitled to patentable weight. Mot. 3–6 (citing Paper 7 (“Pet.”) 17–22). Petitioner also contends that the Board’s determination, as to independent claims 53 and 64, from which these claims depend, should have been extended to claims 54, 55, 65, and 66. *Id.* at 6–7 (citing Dec. 16, 18–19).

For claims 54 and 65, the Petition states that “Liu in view of relevant hospitality industry regulations teaches this limitation.” Pet. 33, 37 (citing Ex. 1007 ¶¶ 53–55; Ex. 1009 ¶¶ 100, 108). The portion of the Petition now cited by Petitioner provides a description of Liu, Sylvan, and Luedtke (Pet. 17–19) and a “Motivation to Combine Liu with Sylvan and Luedtke” (Pet. 19–22). Petitioner’s arguments do not explain how the descriptions of Liu, Sylvan, and Luedtke, and the asserted rationales to combine these

particular references, support the contention that “Liu in view of relevant hospitality industry regulations teaches this limitation”—where the cited portions do not discuss “relevant hospitality industry regulations.” In sum, Petitioner does not direct us to any argument in the Petition that would have supported extending our analysis, regarding independent claims 53 and 64 and Liu, Sylvan, and Luedtke, to claims 54 and 65, or an analysis of “Liu in view of relevant hospitality industry regulations.” We are, therefore, unpersuaded to modify our Decision regarding claims 54 and 65.

For claims 55 and 66, the Petition states “Liu teaches this limitation” and cites the Slocum Declaration. Pet. 33, 37 (citing Ex. 1009 ¶¶ 101, 109). Petitioner does not persuade us that the now cited portions of the Petition explain how or where “Liu teaches this limitation”—where the cited portions of the Petition do not mention paragraphs 101 and 109 of the Slocum Declaration, and do not discuss specifically claims 55 and 66. A request for rehearing is not an opportunity to supplement an initial petition and make arguments a petitioner did not make before. *See* 37 C.F.R. § 42.104(b)(4) (a petition must identify “[h]ow the construed claim is unpatentable under the statutory grounds identified”). We are, thus, not persuaded to modify our Decision as to claims 55 and 66.

For claims 22–24 and 49–51, Petitioner argues that these claims “merely recite obvious design choices.” Mot. 8. Petitioner contends that the Board should have considered “declaratory evidence regarding ordinary skill and common sense—as well as the explanation of the significance of that evidence in the Petition.” Mot. 8 (citing Pet. 20, 40–41; Ex. 1009 ¶¶ 88–89, 121–122); *but see Mintz v. Dietz & Watson*, 679 F.3d 1372, 1377 (Fed. Cir. 2012) (“mere recitation of the words ‘common sense’ without any support

adds nothing to the obviousness equation”). Petitioner asserts that the “Slocum Declaration is relied upon to show that all the elements in the ’512 Patent were known in the prior art, and their combination yielded nothing but predictable results.” Mot. 10 (citing Pet. 20, 40–41). Petitioner argues that the claim charts “cite back to Liu and Bixby, as well as the portions of the [Slocum] Declaration.” Mot. 13 (citing Pet. 26, 31, 47, 52; Ex. 1009 ¶¶ 88, 97, 121, 130).

Petitioner cites pages 20 and 40–41 of the Petition, which provides rationales for combining Liu, Sylvan, and Luedtke and Bixby, Sylvan, and Luedtke. The cited pages of the Petition rely on paragraphs 45–53 and 72–80 of the Slocum Declaration. The cited pages, however, do not explain the significance of paragraphs 88, 89, 97, 98, 121, 122, 130, and 131 of the Slocum Declaration, which are relied on in the motion for reconsideration for claims 22–24 and 49–51, to support the argument that Liu or Bixby teaches the limitations of these claims. The Petition also provides no citations to Liu or Bixby for these claims. Pet. 26, 31, 47, 52. A motion for reconsideration is not an opportunity to raise arguments that were not presented in a petition. We are, thus, not persuaded by Petitioner’s argument.

A petition must contain a “full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence.” 37 C.F.R. § 42.22(a)(2). The Slocum Declaration contains argument, not discussed adequately in the Petition, regarding where limitations are found in the references and why an ordinary artisan would have been led to combine the references to attain the subject matter of claim 26. Under these circumstances, the Petition violates our rule that prohibits

arguments made in a supporting document from being incorporated by reference into a petition. *See* 37 C.F.R. § 42.6(a)(3).

After considering the cited portions of the Petition, we determine Petitioner has not shown that the Board misapprehended or overlooked a matter addressed in the Petition, and therefore, has not carried its burden of demonstrating an abuse of discretion in the Board's decision.

### III. ORDER

In consideration of the foregoing, it is hereby ORDERED that Petitioner's Motion for Reconsideration is *denied*.

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