

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG ELECTRONICS, INC.,
Petitioner,

v.

ATI TECHNOLOGIES ULC,
Patent Owner.

Case IPR2015-00330
Patent 7,327,369 B2

Before JONI Y. CHANG, BRIAN J. McNAMARA, and JAMES B. ARPIN,
Administrative Patent Judges.

ARPIN, *Administrative Patent Judge.*

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

I. INTRODUCTION

LG Electronics, Inc. (“Petitioner”) filed a Petition (Paper 2 (“Pet.”)) to institute an *inter partes* review of claims 1 and 2 (the “challenged claims”) of Patent No. US 7,327,369 B2 (Ex. 1001, “the ’369 patent”), pursuant to 35 U.S.C. §§ 311–319. Pet. 1. Petitioner challenged each of claims 1 and 2 the ’369 patent on the following three grounds (Pet. 13–58):

Claims	Basis	References
1 and 2	35 U.S.C. § 103(a)	Lindholm (Ex. 1004) and Open GL (Ex. 1007)
1 and 2	35 U.S.C. § 103(a)	Rich (Ex. 1005) and Open GL (Ex. 1007)
1 and 2	35 U.S.C. § 103(a)	Stuttard (Ex. 1006) and Open GL (Ex. 1007)

ATI Technologies ULC (“Patent Owner”) filed a Preliminary Response. Paper 12 (“Prelim. Resp.”).

For the reasons described in our Decision on Institution (Paper 13, “Dec. on Inst.”), we instituted an *inter partes* review of all of the challenged claims as allegedly unpatentable over Lindholm and Open GL. Moreover, “*without further comment*, we exercise[d] our discretion under 37 C.F.R. § 42.108(a) and den[ied] institution on [the] additional grounds.” Dec. on Inst. 18 (emphasis added). Petitioner has filed a Request for Rehearing (Paper 15, “Reh’g Req.”), seeking reconsideration of our Decision on Institution. For the reasons set forth below, Petitioner’s Request for Rehearing is *denied*.

II. DISCUSSION

Petitioner asserts three bases for its Request for Rehearing. Reh’g Req. 1–2. First, Petitioner argues that we improperly interpreted the terms of challenged claim 1 to exclude sequential processing of pixel and vertex data and,

consequently, failed to conclude that Rich disclosed the shader recited in claim 1. *Id.* at 2–9. Second, Petitioner argues that, if we had apprehended Rich properly, we would have found that Rich disclosed the limitations of claim 1. *Id.* at 9–12. Third, Petitioner argues that we failed to institute on the asserted ground based in part on Stuttard, which has an earlier priority date than Lindholm. *Id.* at 12.

1. Claim Construction and the Ground based on Rich

With regard to Petitioner’s first and second bases for the Request for Rehearing, we note that we did not address substantively the ground based on Rich and Open GL in our Decision on Institution. Dec. on Inst. 18. To the extent that Petitioner disagrees with the claim construction, upon which we based our decision to institute review of the challenged claims on *another* ground (i.e., Lindholm and Open GL), a Request for Rehearing is not an opportunity for Petitioner to continue to argue for institution of an *additional* ground covering the *same* challenged claims (i.e., Rich and Open GL) based on a different construction or to present *additional* arguments from another case (i.e., IPR2015-00326) against our claim construction. Reh’g Req. 2–4. In appropriate circumstances, such arguments regarding claim construction may be presented in a subsequent paper, such as Petitioner’s Reply to Patent Owner’s Response or Petitioner’s Opposition to a Motion to Amend Claims, or in an appeal of a Final Written Decision to this review *on the instituted ground*. See *Versata Development Group Inc. v. Lee*, Case No. 2014-1145, 2015 WL 4170824 at *2 (Fed. Cir. July 13, 2015). Consequently, we deny Petitioner’s Request for Rehearing on either of these bases.

2. Priority Dates and the Ground Based on Stuttard

With regard to Petitioner’s third basis for the Request for Rehearing, we disagree with Petitioner’s assertion that we did not consider the priority date of Stuttard. Reh’g Req. 2. We considered this date to the extent that Petitioner

argued its relevance, namely, that the applied art qualifies as prior art to the '369 patent. Pet. 11. Although the priority date of Stuttard appears to be earlier than that of Lindholm (Pet. 11), Petitioner did not *argue* that the ground based on the combination of Stuttard and Open GL is in any way superior to the ground based on the combination of Lindholm and Open GL in its Petition. “To avoid a determination that a requested ground of review is redundant of another requested ground, a petitioner must articulate a meaningful distinction in terms of relative strengths and weaknesses with respect to application of the prior art reference disclosures to one or more claim limitations.” *Scentair Tech’s., Inc. v. Politec, Inc.*, Case IPR2013-00179, slip op. at 3 (PTAB Aug. 23, 2013) (Paper 18); *see also Berk-Tek LLC v. Belden Tech’s, Inc.*, Case IPR2013-00057, slip op. at 5 (PTAB May 14, 2013) (Paper 21)(“It is not unreasonable for Berk-Tek, who desires to allege multiple grounds of unpatentability, to articulate what Berk-Tek ‘itself’ sees as meaningful distinctions between the grounds.”). Consequently, as we state in our Decision on Institution, “*each* of the asserted grounds . . . addresses *all* of the challenged claims and . . . Petitioner does not provide argument or evidence clearly favoring institution on any one of the asserted grounds over the others.” Dec. on Inst. 18.

Moreover, speculation first raised in the Request for Rehearing that Patent Owner might attempt to swear behind the priority date of Lindholm in the future does not establish a meaningful distinction between grounds. Reh’g Req. 12 (“should the Patent Owner attempt to swear behind the priority date of Lindholm”). Here, Patent Owner did not attempt to swear behind either Stuttard or Lindholm in its Preliminary Response or indicate that it intended to make such an attempt in a subsequent paper in the case. Therefore, we also deny Petitioner’s Request for Rehearing on this basis.

III. ORDER

For the reasons given, it is

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

PETITIONER:

Robert G. Pluta
John H. Zhu
Jamie B. Beaber
Michael W. Maas
MAYER BROWN LLP
rpluta@mayerbrown.com
jbeaber@mayerbrown.com
mmaas@mayerbrown.com

PATENT OWNER:

Jon E. Wright
Michael Specht
Michael Ray
Johnathan Tuminaro
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
jwright@skgf.com
mspecht-PTAB@skgf.com
mray-PTAB@skgf.com
jtuminaro@skgf.com