

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MEYER PRODUCTS, LLC,
Petitioner,

v.

DOUGLAS DYNAMICS, L.L.C.,
Patent Owner.

Case IPR2015-01247
Patent 6,928,757 B2

Before MICHAEL W. KIM, JAMES A. TARTAL, and
JAMES A. WORTH, *Administrative Patent Judges*.

WORTH, *Administrative Patent Judge*.

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

I. INTRODUCTION

We held a call with counsel for the parties at the request of Patent Owner on February 11, 2016,¹ concerning, *inter alia*, Patent Owner's

¹ The date of the call was misstated in Paper 12.

request for authorization to file a motion for additional discovery. On February 16, 2016, we issued an Order on the Conduct of the Proceedings denying authorization to file a motion for additional discovery at this time. Paper 12, (“Order”). On February 29, 2016, Patent Owner filed a Motion for Rehearing Pursuant to 37 C.F.R. § 42.71(d) (Paper 14, “Request”), seeking reconsideration of the Order denying authorization to file a motion for additional discovery. For the reasons set forth below, Patent Owner’s Request for Rehearing 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. BACKGROUND

The relevant background information is stated in the Order. Paper 12, 1–3. In short, Patent Owner seeks to use, through discovery at the Board, documents it has already obtained in discovery in a co-pending matter in the U.S. District Court for the District of Wisconsin. *Douglas Dynamics, LLC vs. Meyer Products, LLC*, Case No. 3:14-cv-00886 (W.D. Wis.). Patent Owner acknowledges that the production of documents was subject to a

Protective Order issued by the District Court in that proceeding (“Protective Order”), and that the Protective Order prohibited the use of produced documents for any purpose outside of the District Court proceeding without the permission of the party that produced the document. Petitioner has not agreed in this proceeding to permit Patent Owner to use the documents Petitioner produced in District Court. Patent Owner, however, would be using information obtained from Petitioner’s documents in District Court were Patent Owner allowed to argue for additional discovery because Patent Owner would necessarily have to discuss the underlying contents of the documents in order to show how its request meets the factors set out in *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, Case IPR2012-00001, slip op. at 6–7 (PTAB Mar. 5, 2013) (Paper 26) (informative). The parties disagree over whether such use of information from the District Court proceeding is a violation of the Protective Order. In light of that disagreement, the Order declined to authorize Patent Owner’s request until Patent Owner sought guidance first from the District Court with regard to maintaining compliance with the Protective Order.

IV. REHEARING REQUEST

A. *Whether the Panel Misapprehended the Nature of the Discovery Request*

Patent Owner contends that we misapprehended Patent Owner’s request, because “Douglas’s request to the Board is not to seek authorization from the Board to use the documents as produced in the District Court litigation under the District Court Protective Order. Rather, it is to authorize discovery of Meyer’s business documents in the IPR proceeding so that the

Meyer documents may be produced in the IPR proceeding subject to the IPR Protective Order.” Request 2. We disagree. As set forth at pages 1–2 of the Order, the panel understood that Patent Owner was requesting “additional discovery” as a vehicle for using the documents in this proceeding. This was also discussed as part of the call with counsel.

B. Whether the Subject Documents Exist Independently of the Litigation Protective Order

Patent Owner next argues that the Board misapprehended or overlooked the fact that the relevant documents pre-date and exist independently of the District Court litigation and Protective Order. Request 2. Patent Owner’s arguments are misplaced, as the timing of the existence of the documents themselves does not preclude the fact that Patent Owner’s use of those documents may still be governed by the Protective Order. *See, e.g., Jazz Pharmaceuticals, Inc. v. Amneal Pharmaceuticals LLC*, No. 13-391(ES) (JAD) (D.N.J. Jan. 22, 2016) (letter order).

Patent Owner asserts that it is the responsibility of the District Court, and not the Board, to assess and enforce compliance with the Protective Order. Request 6. We agree, and, in the light of the current circumstances, we decline to exercise our discretion to permit Patent Owner’s request, when Patent Owner is in a position to seek clarification from the District Court concerning the scope of the Protective Order.

C. Whether the Panel Misapprehended or Overlooked Board Precedent

Patent Owner asserts additionally that the panel’s actions here are inconsistent with that taken by other panels, such as in *Brunswick Corp. v. Cobalt Boats, LLC*, Case IPR2015-01060 (PTAB Dec. 9, 2015) (Paper 15)

and *Chervon North America, Inc. v. Milwaukee Electric Tool Corp.*, Case IPR2015-00595, slip op. at 4 (PTAB Oct. 30, 2015) (Paper 31).

As an initial matter, we note that Patent Owner brought *Brunswick Corp.* to the Board's attention in the call of February 11, 2016. In issuing the Order, it was considered expressly, and not misapprehended or overlooked. Furthermore, as Patent Owner identifies *Chervon* as having similar circumstances to *Brunswick*, that case also could not have been misapprehended or overlooked. And in any case, we note that neither *Brunswick* nor *Chervon* has been designated as precedential by the Board, and we decline to exercise our discretion with respect to Patent Owner's request for the reasons set forth *supra*.

V. CONCLUSION

We are not persuaded that the Order overlooked or misapprehended any arguments, or otherwise committed an error of law or abuse of discretion. Patent Owner may update the Board if the status of this case changes, e.g., after seeking guidance or relief from the District Court as to the scope of the Protective Order.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner's Request for Rehearing is *denied*.

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