

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ATLAS COPCO AIRPOWER N.V.,
Petitioner,

v.

KAESER KOMPRESSOREN SE,
Patent Owner.

Case IPR2015-01421
Patent 8,349,054 B2

Before ERICA A. FRANKLIN, CHRISTOPHER L. CRUMBLY, and
JO-ANNE M. KOKOSKI, *Administrative Patent Judges*.

FRANKLIN, *Administrative Patent Judge*.

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

I. INTRODUCTION

Atlas Copco Airpower N.V. (“Petitioner”) requests reconsideration of the Decision to Institute entered on December 28, 2015 (Paper 8, “Decision” or “Dec.”). Paper 10 (“Rehearing Request” or “Reh’g Req.”).

In the Decision, we addressed the following grounds of unpatentability for challenged claims 1–20 of U.S. Patent No. 8,349,054 B2 (Ex. 1001):

Reference(s)	Basis	Claims
Dunne ¹	§ 102(b)	1–2, 4–6, and 14–18
Dunne	§ 103(a)	3 and 4
Dunne and White ²	§ 103(a)	8–13, 19, and 20
Dunne and The Handbook ³	§ 103(a)	7–11
Dunne and Vertriest ⁴	§ 103(a)	5 and 14

Upon considering the Petition (Paper 1), Preliminary Response (Paper 7 (“Prelim. Resp.”)) and evidence of record, we determined that Petitioner demonstrated a reasonable likelihood of prevailing in showing the unpatentability of claims 1, 2, 4, 5, and 7–20. Accordingly, we instituted an *inter partes* review of only those claims. Dec. 1.

In the Rehearing Request, Petitioner seeks reconsideration of our decision not to institute an *inter partes* review of dependent claim 6. Reh’g Req. 1.

¹ Ex. 1002, US 2005/0150378 A1; published July 14, 2005 (“Dunne”).

² Ex. 1003, US 6,527,836 B1; issued Mar. 4, 2003 (“White”).

³ Ex. 1004, COMPRESSED AIR AND GAS HANDBOOK (John P. Rollins ed., 5th ed. 1989) (“The Handbook”).

⁴ Ex. 1005, US 2003/0163929 A1; published Sept. 4, 2003 (“Vertriest”).

II. ANALYSIS

“When rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c). “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.” *Id.* § 42.71(d). Because Petitioner has not satisfied those requirements, as discussed below, the Rehearing Request is *denied*.

Petitioner asserts that “[t]he Board relied on the Patent Owner’s argument in deciding not to institute trial on claim 6,” and that such argument was “incorrect.” Reh’g Req. 2. Petitioner states that “Petitioner did not have an opportunity to reply to Patent Owner’s argument,” *id.*, and therefore does so in the Rehearing Request.⁵

Claim 6 recites:

The adsorption drying apparatus according to claim 1, wherein a first cross-sectional area Q1 of the first feeding line defining the regeneration sector is smaller than a third cross-sectional area Q3 of the second feeding line (107) adjacent to the adsorption chamber (11), a ratio of Q1/Q3 being in a range of 0.9 to 1.0, and/or a cross-sectional area Q2 of the second feeding line defining the drying sector (102) is smaller than a *fourth cross-sectional area Q4 of the first discharging line (109) adjacent to the adsorption chamber (11)*, in order to cool the adsorption chamber (11) within the cooling sector (119).

Ex. 1001, 14:46–55 (emphasis added).

⁵ We note that Petitioner did not request authorization from the Board to file a reply to the Preliminary Response to address these arguments.

In the Decision, we explained that Petitioner did not show sufficiently that Dunne discloses each and every limitation of claim 6, specifically a cross-sectional area Q2 of the second feeding line defining the drying sector is smaller than a fourth cross-sectional area Q4 of the first discharging line adjacent to the adsorption chamber. Dec. 18–20. We found persuasive Patent Owner’s argument that Figure 2 of Dunne shows that “the portions of the feeding and corresponding discharging lines **adjacent to** the desiccant wheel 26 are exactly the same on both sides of the desiccant wheel 26. ‘D+C’ (i.e., the cross-sectional areas of the drying and cooling sectors) do not form one cross-section of a discharging line, namely Q4.” Prelim. Resp. 39–40; Dec. 20.

In the Rehearing Request, rather than identifying matters that Petitioner believes the Board misapprehended or overlooked, Petitioner opposes Patent Owner’s argument in the Preliminary Response by addressing for the first time the claim language “adjacent to” recited in claim 6. *Compare* Reh’g Req. 4–6 *with* Pet. 35–38 (discussing claim 6 without mentioning or addressing the “adjacent to” limitation).⁶ To that end, Petitioner provides in the Rehearing Request for the first time: (a) a proposed construction for that term; (b) an annotated version of Dunne’s Figure 2; and (c) an argument asserting how its proposed construction and annotated figure allegedly support finding that Dunne discloses the disputed claim limitation.⁷ Reh’g Req. 2–6. Because Petitioner did not present these

⁶ In this regard, Petitioner’s Rehearing Request amounts to an unauthorized reply to Patent Owner’s Preliminary Response.

⁷ As those items are newly presented, Petitioner necessarily fails to satisfy the rehearing requirement to identify “the place where each matter was previously addressed.” 37 C.F.R. § 42.71(d).

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arguments in the Petition, we could not have misapprehended or overlooked them when considering whether to institute a review of claim 6. *See* 37 C.F.R. § 42.71(d).

Accordingly, Petitioner's Rehearing Request is *denied*.

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