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Paper 9
Entered: February 8, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRW AUTOMOTIVE U.S. LLC,
Petitioner,

v.

MAGNA ELECTRONICS INC.,
Patent Owner.

Case IPR2015-01426 (Patent 8,692,659 B2)
Case IPR2015-01427 (Patent 8,692,659 B2)

Before PHILLIP J. KAUFFMAN, BARRY L. GROSSMAN, and ROBERT J. WEINSCHENK, *Administrative Patent Judges*.

WEINSCHENK, *Administrative Patent Judge*.

DECISION[1]
Denying Request for Rehearing
37 C.F.R. § 42.71

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[1] We exercise our discretion to issue one identical decision in each case using this caption style. Unless otherwise authorized, the parties are not permitted to use this style. This decision cites to the record of IPR2015-01426, unless otherwise noted.

I. INTRODUCTION

TRW Automotive U.S. LLC ("Petitioner") filed a Request for Rehearing (Paper 8, "Req. Reh'g") of the Decision Denying Institution of *Inter Partes* Review (Paper 7, "Dec.") of claims 37, 41, 43, and 45–48 of U.S. Patent No. 8,692,659 B2 (Ex. 1002, "the '659 patent") in IPR2015-01426, and the Decision Denying Institution of *Inter Partes* Review of claims 6–10, 12, 13, 22, and 27 of the '659 patent in IPR2015-01427. Because both cases relate to the '659 patent and the Request for Rehearing in each case presents the same issues, we issue one identical decision in each case. In the Request for Rehearing, Petitioner argues that we misapprehended or overlooked several matters in the Petition. For the reasons set forth below, the Request for Rehearing is denied.

II. ANALYSIS

When considering a request for rehearing, the Board reviews its decision for an abuse of discretion. 37 C.F.R. § 42.71(c). The party requesting rehearing bears the burden of showing that the decision should be modified, and "[t]he request must specifically identify all matters the party believes the Board misapprehended or overlooked." 37 C.F.R. § 42.71(d).

A. *The '287 Patent as Prior Art*

In the Decision, we determined that Petitioner did not demonstrate a reasonable likelihood of prevailing in showing that U.S. Patent No. 6,445,287 B1 (Ex. 1012, "the '287 patent") is prior art because Petitioner did not show sufficiently that the '287 patent lacks written description of the challenged claims of the '659 patent. Dec. 6–9. We explained that the '287 patent reasonably conveys that the console supported by attachment members in Figure 16B of the '287 patent provides mounting surfaces for

vehicle accessories described in other embodiments in the ’287 patent, including a forward facing camera. *Id.* Petitioner argues that we misapprehended the disclosure of the ’287 patent. Req. Reh’g 2–11.

Specifically, Petitioner argues that the ’287 patent does not describe sufficiently how the attachment members, such as rails, channels, or the like, support console 8512 in Figure 16B. *Id.* at 3–4. According to Petitioner, “[u]pward movement of the console 8512 at the top of this structure, as might otherwise engage a rail or channel, would be blocked by the roof of the car at the header H,” and “[s]liding movement at the bottom is blocked by interference from the mirror assembly 8510.” *Id.* Petitioner’s argument is not persuasive. Petitioner does not explain why upward movement of console 8512 is required in order for the attachment members to support console 8512. *Id.* Also, downward movement of console 8512 is not blocked by interference from mirror assembly 8510. As we explained in the Decision, the ’287 patent discloses that console 8512 includes an inverted V-shaped or U-shaped portion that straddles mirror mounting button 8536. Dec. 8 (citing Ex. 1012, col. 28, ll. 15–28). Thus, even assuming arguendo that downward movement of console 8512 is required, the inverted V-shaped or U-shaped portion of console 8512 may slide downward on each side of mirror mounting button 8536. Ex. 1012, col. 28, ll. 15–28.

Petitioner also argues that the ’287 patent does not describe sufficiently that the console in Figure 16B can be used to mount a forward facing camera. Req. Reh’g 4–11. According to Petitioner, the console in Figure 16B only can be used to mount vehicle accessories described in *previous* embodiments in the ’287 patent, and the forward facing camera only is described in a *later* embodiment. Req. Reh’g 4–8, 10–11.

Petitioner's argument is not persuasive. The '287 patent states that the console in Figure 16B provides "mounting surfaces for one or more vehicle accessories, *such as* described in reference to previous embodiments." Ex. 1012, col. 28, ll. 1–7 (emphasis added). Thus, the '287 patent indicates that previous embodiments provide examples of accessories that can be mounted on the console in Figure 16B, but does not indicate that those are the only accessories that can be mounted on the console. *Id.* We are not persuaded that the patentee lacked possession of the claimed subject matter because a forward facing camera is described later in the '287 patent.

B. *Reasons for Combining Schofield and Klappenbach*

In the Petition, Petitioner argued that it would have been obvious to use the camera in Schofield rather than the sensor in Klappenbach because the camera provides more functionality. Paper 2 ("Pet."), 48. In the Decision, we explained that we were not persuaded by Petitioner's argument because Petitioner only indicates why one of ordinary skill in the art would select the camera in Schofield over the sensor in Klappenbach, not why it would have been obvious to mount the camera in Schofield using the fastening device and housing in Klappenbach. Dec. 12. Petitioner argues that it was unreasonable for us to assume that one of ordinary skill in the art would combine Blank and Schofield without the fastening device and housing in Klappenbach because that would require "mount[ing] two rearview mirrors to the same windshield." Req. Reh'g 12. Petitioner's argument is not persuasive.

First, we did not determine or assume that it would have been obvious to one of ordinary skill in the art to combine the cited teachings of Blank and Schofield. *See* Dec. 9–13. Second, Petitioner argued in the Petition that it

would have been obvious to combine the camera in Schofield with the information display in Blank independent of any teachings in Klappenbach. Pet. 46 ("A person of ordinary skill in the art at the time of purported invention would have found it obvious to combine Blank with Schofield."). As a result, Petitioner's argument in the Request for Rehearing that such a combination would have been unreasonable was not presented previously in the Petition, and we could not have misapprehended or overlooked it. Third, Petitioner does not explain why combining Blank and Schofield without the fastening device and housing in Klappenbach would necessarily result in mounting two rearview mirrors to the same windshield. Req. Reh'g 12. For example, Petitioner does not explain why one of ordinary skill in the art would not combine Blank and Schofield by mounting the camera in Schofield to the windshield using bracket 34 without rearview mirror 30. *Id.*; Ex. 1007, col. 3, ll. 64–67, Fig. 1; *see KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007) ("A person of ordinary skill is also a person of ordinary creativity, not an automaton.").

In the Petition, Petitioner argued that it would have been obvious to use the fastening device and housing in Klappenbach to mount the camera in Schofield because the housing in Klappenbach would advantageously seal the components of the camera in Schofield to prevent intrusion of elements from the environment. Pet. 48. In the Decision, we explained that we were not persuaded by Petitioner's argument because Schofield teaches that the camera disclosed therein already is protected from environmental elements. Dec. 12. Petitioner argues that we overlooked the fact that the housing in Klappenbach prevents environmental contamination that may occur inside the vehicle, such as from dust. Req. Reh'g 14. Petitioner's argument is not

persuasive. As we explained in the Decision, Schofield teaches that the housing and location of the camera already are sufficient to substantially eliminate environmental dirt and moisture. Dec. 12 (citing Ex. 1007, col. 3, l. 64–col. 4, l. 4).

In the Petition, Petitioner argued that it would have been obvious to use the fastening device and housing in Klappenbach to mount the camera in Schofield because the fastening device in Klappenbach can be preinstalled. Pet. 48–49. In the Decision, we explained that we were not persuaded by Petitioner's argument. Dec. 12. Petitioner argues that we misapprehended the proposed combination. Req. Reh'g 15. Specifically, Petitioner contends that "[t]he argument is not that Schofield's housing and bracket 32 would be incorporated into Klappenbach's module, but that Schofield's camera replaces the rain sensor in Klappenbach's housing." *Id.* Petitioner's argument is not persuasive. We did not misapprehend the proposed combination. As explained in the Decision, we determined that Petitioner had not shown sufficiently that it would have been obvious to use the fastening device and housing in Klappenbach to mount the camera in Schofield. Dec. 12–13.

Petitioner also argues that we only characterized Schofield as teaching a vehicle headlight dimming control, and, thus, overlooked "the fact that Schofield's control is also a *rain sensor*." Req. Reh'g 12–13. Petitioner's argument is not persuasive. Petitioner argued in the Petition that "Schofield's camera based rain sensor provided added functionality in *controlling headlights* and safety warnings as compared to Klappenbach's rain sensor." Pet. 48 (emphasis added). Because Petitioner expressly relied on the headlight control functionality taught in Schofield, we are not

persuaded that we erred in characterizing the camera in Schofield as being, *inter alia*, a vehicle headlight dimming control. Further, in the Decision, we did not rely on any differences between a vehicle headlight dimming control and a rain sensor as the basis for our determination. Dec. 12–13.

Moreover, in the Decision, we also determined that Petitioner did not show sufficiently that the proposed combination of Blank, Schofield, and Klappenbach would have taught or suggested the limitation "said structure is configured to accommodate a forward facing camera." Dec. 11. Petitioner does not identify any error in that determination. *See* Req. Reh'g 11–15. Thus, even assuming arguendo that it would have been obvious to combine Blank, Schofield, and Klappenbach, Petitioner still does not show sufficiently that the proposed combination would have taught or suggested all the limitations of the challenged claims.

III. CONCLUSION

The Request for Rehearing does not demonstrate that we misapprehended or overlooked any matters raised in the Petition.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Request for Rehearing is *denied.*

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