

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LEGGETT & PLATT, INC.,
Petitioner,

v.

DREAMWELL, LTD.,
Patent Owner.

IPR2015-01753
Patent 8,474,805

Before MEREDITH C. PETRAVICK, MICHAEL J. FITZPATRICK, and
BARRY L. GROSSMAN, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

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

I. INTRODUCTION

Leggett & Platt, Inc. (“Petitioner”) timely filed a “Request for Rehearing” (Paper 9, “Req. Reh’g.”) requesting rehearing of our decision (Paper 8, “Decision”) denying institution of *inter partes* review of claims 1–20 of U.S. Patent No. 8,474,805 B2 (Ex. 1001, “the ’805 patent”). Petitioner asserts three basic reasons supporting its Request. First, Petitioner asserts that “the Decision misapprehended the way in which Petitioner proposed combining the teachings of Kochi (Ex. 1004) and Gladney (Ex. 1003).”

Req. Reh’g. 1. According to Petitioner, Kochi’s teachings regarding the high-carbon spring composition “were relied upon as a whole,” and “[t]he statement in the Decision on page 12 that Petitioner relied on Kochi without the required pearlite microstructure and alloy elements is in error.” *Id.* at 5.¹ Second, Petitioner asserts “the Decision overlooked disclosure in the ’805 patent which permits having a ‘pearlite’ microstructure and the same alloy elements as required by Kochi.” *Id.* at 1 (citations omitted). Third, Petitioner asserts the Decision “erred in adopting Patent Owner’s position” regarding “complex interactive effects” of Kochi’s alloy elements. *Id.* at 8.

For the reasons stated below, we deny Petitioner’s Request.

II. ANALYSIS

When rehearing a decision on institution, the Board reviews the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may arise if the decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if an

¹ The “statement” to which the Request apparently refers reads: “Petitioner does not cite any persuasive evidence that Kochi achieves any of the asserted advantages of the disclosed alloy without the claimed and disclosed pearlite structure.” Decision 12.

unreasonable judgment is made in weighing relevant factors. *Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000).

The burdens and requirements of a request for rehearing are stated in 37 C.F.R. § 42.71(d):

(d) Rehearing. . . . 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.

A. Kochi’s Teachings As A Whole.

Petitioner asserts the Petition “presented a challenge of unpatentability that relied on Gladney for the teaching of using high-carbon springs in cushioning articles and Kochi for the teaching of the manufacturing process and the high-carbon composition for the spring.” Req. Reh’g. 3. Petitioner also asserts it “relied upon both the manufacturing process and the high-carbon spring composition described by Kochi as a whole—without modifying the pearlite microstructure or excluding any alloy element required by Kochi—to obtain the multiple benefits described by Kochi.” *Id.* at 4.

The Decision did not overlook or misapprehend Petitioner’s position. The Decision determined that the evidence did support Petitioner’s rationale for combining the asserted references.

Petitioner asserted that claims 1–20 would have been obvious to one of ordinary skill in the art over Gladney, Kochi, and Magrab. Pet. 22–59. As pointed out in the Decision, Petitioner’s rationale for the proposed combination of references was based primarily on Kochi’s disclosure of a

composition that provided “excellent wire-drawing workability, generating wire insusceptible to wire break, extending die life, increasing a wire-drawing rate thereby enhancing productivity during the manufacturing process, reducing cost, and producing a product, *e.g.*, spring that is less susceptible to breakage.” *Id.* at 33–34. According to Kochi’s disclosure, however, the benefits on which Petitioner relied for the proffered rationale result from:

adequately controlling the requirements for the metal microstructure thereof (the area ratio of the second-phase ferrite, and the pearlite lamellar spacing) and the requirements for the chemical components thereof.

Decision 12 (citing Ex. 1002 ¶ 71); *see also* Ex. 1004 ¶ 41 (disclosing the need to control the area ratio of second-phase ferrite to achieve improved resistance to wire-break). Kochi also discloses that “pearlite is the primary constituent of the metal microstructure.” Ex. 1004 ¶ 43. As stated in the Decision, there was no persuasive evidence that Kochi achieves any of the asserted advantages of the disclosed alloy without the disclosed pearlite lamellar structure. Decision 12. In weighing the evidence, the Decision determined there was no persuasive evidence that it would have been obvious to a person of ordinary skill that the asserted benefits in Kochi can be achieved with an alloy that does not include the metal microstructure of Kochi. *Id.*

The Decision also stated there is no persuasive evidence to support Petitioner’s argument the claimed invention would have been obvious based on the proposed combination of references because the coil spring recited in the challenged claims is less expensive or more efficient than prior art springs. *Id.* at 13–14. Additionally, the Decision stated “there is no persuasive evidence or data to support Dr. O’Malley’s opinion that the

combined disclosures of the references ‘would have reduced total manufacturing cost of the spring to thereby enhance commercial opportunities.’” *Id.* at 14 (citing Ex. 1002 ¶ 93).

A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). It is not enough to show merely that the prior art includes separate references covering each separate limitation in a challenged claim. *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011). Rather, obviousness requires the additional showing that a person of ordinary skill at the time of the invention would have selected and combined those prior art elements in the normal course of research and development to yield the claimed invention. *Id.*

B. Open-Ended Claims

Petitioner next asserts the Decision misapprehended or overlooked the fact that the challenged claims use the word “comprises,” which leaves the claim open-ended for additional elements. As discussed above, our decision was based on a failure of the evidence to support Petitioner’s proffered rationale, not on an interpretation of the scope of the challenged claims.

C. Complex Interactions.

Petitioner also asserts that the Decision erred in adopting Patent Owner’s contention that complex interactive effects among Kochi’s elements would have made the result unpredictable. Req. Reh’g. 6–8. Petitioner argues “[t]he Decision . . . erred in adopting Patent Owners’ position.” *Id.* at 8. The fact that Petitioner disagrees with our determination is not a basis for rehearing.

D. Reasonable Likelihood of Success.

Petitioner's request also re-argues the merits of its Petition. Req. Reh'g. 8–12. As argued by Petitioner, “[t]he only question, then, is whether a person of ordinary skill in the art at the time of the alleged invention would have had ‘an apparent reason to combine the known elements in the fashion claimed by the patent at issue.’” *Id.* at 9 (quoting *KSR*, 550 U.S. at 418). We considered and decided this question based on the evidence and determined that Petitioner's proffered rationale was not persuasive. A request for rehearing is not a second opportunity to re-argue the merits of the Petition.

III. CONCLUSION

We denied the Petition because Petitioner failed to provide a persuasive rationale for why a person of ordinary skill would have combined the cited references to yield the invention in the challenged claims. Petitioner has not persuaded us that our determination was an abuse of our discretion, or that we misapprehended or overlooked any matter. Accordingly, we deny the request for rehearing.

IV. ORDER

For the reasons given, it is

ORDERED that the request for rehearing is *denied*.

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Patent 8,474,805 B2
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