

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALLERGAN, INC. and ALLERGAN SALES, LLC,
Petitioner,

v.

1474791 ONTARIO, LTD.,
Patent Owner.

Case IPR2016-00102
Patent 6,806,251 B2

Before SHERIDAN K. SNEDDEN, TINA E. HULSE, and
ELIZABETH A. LAVIER, *Administrative Patent Judges*.

SNEDDEN, *Administrative Patent Judge*.

DECISION

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

I. INTRODUCTION

An *inter partes* review was instituted in the above referenced case. Paper 26 (“Decision”). Patent Owner 1474791 Ontario, Ltd. (“Patent Owner”) requested rehearing of our Decision. Paper 29 (“Request”). In its Request, Patent Owner contends that the Board should reconsider its decision to institute on the ground of anticipation of challenged claims 1–4, 6, and 7 by Travell, because the conclusion set forth in the Decision is based on an incorrect claim construction of the term “solely.” Request 1.

For the reasons set forth below, Patent Owner’s request for rehearing is denied.

II. STANDARD OF REVIEW

When rehearing a decision, the Board reviews the decision for an abuse of discretion. See 37 C.F.R. § 42.71(c). An abuse of discretion occurs when a “decision [i]s 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., Inc.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988). “The burden of showing that a decision should be modified lies with the party challenging the decision.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). In its request for rehearing, the dissatisfied party must (1) “specifically identify all matters the party believes the Board misapprehended or overlooked” and (2) identify the place “where each matter was previously addressed.” 37 C.F.R. § 42.71(d); Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,768. We address Petitioner’s arguments with these principles in mind.

III. ANALYSIS

In its Request, Patent Owner contends that we “overlooked the plain meaning of ‘solely’” and “erred as a matter of law in allowing the effect of ‘comprising’ to override the plain meaning of ‘solely.’” Request 4 (citing Decision 8 (“[W]e find no intrinsic evidence clearly suggesting that the intended meaning of the term ‘solely’ should be construed to exclude [additional steps involving, for example,] injections to other muscle locations.”)).

We have considered Patent Owner’s positions set forth in the Request and are not persuaded at this time to change our claim construction as set forth in the Decision. In its Request, Patent Owner does not direct us to any evidence that we may have misapprehended or overlooked when reaching our conclusions on claim construction. Rather, Patent Owner continues to advocate its position with regard to claim construction and expresses disagreement with our Decision, but does not persuade us that we misapprehended or overlooked any matter at this stage of the proceeding. As noted in our Decision, we have not made a final determination as to the patentability of any challenged claim or the construction of any claim term. Dec. 14. Patent Owner may present its arguments in its response to the petition and we will fully consider those arguments in view of the complete record when rendering our final written decision.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner’s request for rehearing is *denied*.

IPR2016-00102
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