

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INNOVATIVE ENVIRONMENTAL TECHNOLOGIES, INC.,
Petitioner,

v.

PEROXYCHEM LLC,
Patent Owner.

Case IPR2016-00198
Patent 7,785,038 B2

Before CHRISTOPHER L. CRUMBLEY, KRISTINA M. KALAN, and
JON B. TORNQUIST, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

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

I. INTRODUCTION

Patent Owner PeroxyChem LLC (“Patent Owner”) filed a Request for Rehearing (Paper 14, “Req.”). In rendering the Decision to Institute (Paper 12, “Dec.”), we instituted an *inter partes* review as to claims 1, 2, 4, 5, 10, 11, and 13 of U.S. Patent No. 7,785,038 B2 (Ex. 1001, “the ’038 patent”). In its Request for Rehearing, Patent Owner contends that the Board should reverse its Decision to Institute in part and deny institution on one of the anticipation grounds instituted. Req. 1.

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

II. ANALYSIS

A request for rehearing must identify specifically all matters the party believes the Board misapprehended or overlooked, and the place where each matter was addressed previously in a motion, an opposition, or a reply. 37 C.F.R. § 42.71(d). The Board applies an abuse of discretion standard in reviewing institution decisions. 37 C.F.R. § 42.71(c).

In its Request for Rehearing, Patent Owner contends that (a) there is no material dispute regarding claim construction (Req. 4–5); (b) there is no material dispute regarding the disclosure of Chowdhury¹ (*id.* at 5); (c) Petitioner failed to show that Chowdhury anticipates claim 1 (*id.* at 6–8); and (d) the Board has misapprehended or overlooked the law of inherent anticipation (*id.* at 8–11). We disagree.

Specifically, with respect to points (a) and (b), Patent Owner argues that “the clear language of the claim requires contacting the contaminant with

¹ U.S. Patent Pub. No. 2005/0056598 A1 to Chowdhury et al., published March 17, 2005 (“Chowdhury”) (Ex. 1010).

the composition comprising Component A and Component B, as distinguished from contacting the contaminant with Component A and then contacting the contaminant with Component B where there is no opportunity for the composition to form.” *Id.* at 4. Patent Owner further argues that “Chowdhury does not expressly disclose contacting the contaminant with the recited composition, but rather discloses sequentially contacting the contaminant with the recited components of the composition, and is silent with respect to whether this sequential process results in the formation of the claimed composition.” *Id.* at 6.

Patent Owner did not propose an express construction of the phrase “composition comprising a water soluble persulfate compound and zero valent iron” in its Preliminary Response. *See* Dec. 6. In our Decision to Institute, we determined that this phrase required no express construction. *Id.* Although Patent Owner avers that there is no material dispute regarding claim construction, it urges in its Request for Rehearing a construction that Patent Owner has not previously raised. Req. 4–5. A Request for Rehearing is not an opportunity to present a new argument about claim construction, notwithstanding its framing as a matter that is not in dispute.

With respect to point (c), Patent Owner essentially repeats its arguments that Petitioner has failed to show anticipation of claim 1 by Chowdhury. *Id.* at 6–8. We have already considered and discussed the parties’ anticipation arguments in the Decision to Institute. Dec. 13–15.

With respect to point (d), Patent Owner argues that, because Chowdhury “fails to expressly anticipate Claim 1,” the Board “must find that Chowdhury inherently anticipates Claim 1.” Req. 8. As noted above, we have considered and discussed the parties’ anticipation arguments in the

Decision to Institute. Notably, we did not agree with Patent Owner's argument that Petitioner failed to show anticipation by Chowdhury; instead, we found that, given the information before us and the standards for institution of *inter partes* review, "Petitioner has demonstrated that Chowdhury is reasonably likely to anticipate the challenged claims."

Dec. 15. Patent Owner's attempt to read into our Decision to Institute its own conclusion on express anticipation is unwarranted.

In rendering a Decision to Institute, the Board need not address every possible issue and take a position on every potential theory of unpatentability; rather, we determine whether the record, at the time, establishes a reasonable likelihood of success. The standard for institution of an *inter partes* review requires nothing more. In reaching our determination in the Decision to Institute, we acknowledged Patent Owner's arguments regarding both express anticipation and inherent anticipation and found that the anticipation ground based on Chowdhury, as presented in the Petition, met the standard required for institution of an *inter partes* review. Dec. 13–15. We did not overlook these arguments, and Patent Owner has not shown that the Board misapprehended or overlooked any matter in instituting trial in this proceeding.

III. ORDER

In consideration of the foregoing, it is hereby:

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

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